



matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 8, 2024, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated February 23, 2023, the Ocean County Board of Social Services (Ocean County) granted Petitioner's November 23, 2023, Medicaid Long Term Services and Support (MLTSS) benefits application effective February 15, 2024. However, a penalty of five hundred sixty-four (564) days was assessed on Petitioner's receipt of Medicaid benefits. The penalty was imposed based upon transfers of assets, totaling \$211,231.63 for less than fair market value, during the five-year look-back period. (R-13). Specifically, the ALJ found that the Petitioner failed to demonstrate that the transferred funds were exclusively for another purpose other than to qualify for Medicaid. I concur. Petitioner failed to satisfy the burden of showing, through credible documentary evidence, that the transfers at issue were executed exclusively for some other purpose than to qualify for Medicaid.

Petitioner argues that the transferred assets were to reimburse their son, G.P., for repairs and renovations to Petitioner's home, which increased its value and allowed Petitioner to afford nursing home care after selling their house. However, Ocean County determined that Petitioner's transferred assets were gifts because there was no formal loan repayment agreement before the transfers, and expenditures were not adequately documented. Despite evidence provided by the Petitioner of payments made for construction work, Ocean County could not determine what specific expenditures were being reimbursed. As a result, Ocean County imposed a transfer penalty based on the

sums transferred from Petitioner to G.P. totaling \$582,731.63 minus the amount G.P. transferred back to Petitioner, resulting in a penalty of \$211,231.63. (R-13).

In determining Medicaid eligibility for someone seeking institutionalized benefits, counties must review five years of financial history. Under the regulations, “[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period,” a transfer penalty of ineligibility is assessed. N.J.A.C. 10:71-4.10(c). “A transfer penalty is the delay in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period.” E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). “[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification.” Ibid. Congress's imposition of a penalty for the disposal of assets for less than the fair market value during or after the look-back period is “intended to maximize the resources for Medicaid for those truly in need.” Ibid.

The applicant “may rebut the presumption that assets were transferred to establish Medicaid eligibility by presenting convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose.” N.J.A.C. 10:71-4.10(j). The burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide that “if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted.” N.J.A.C. 10:71-4.10(i)2.

Regarding transfers of assets that were purportedly made as compensation for work or services provided by a family member, N.J.A.C. 10:71-4.10(b)(6)(ii) provides the following:

Regarding transfers intended to compensate a friend or relative for care or services provided in the past, care, and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation. Thus, a transfer of assets to a friend or relative for the alleged purpose of compensating for care or services provided free in the past shall be presumed to have been transferred for no compensation. This presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of the care or services indicating the type and terms of compensation. Further, the amount of compensation or the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community. That portion of compensation in excess of the prevailing rate shall be considered uncompensated value.

Here, Petitioner was admitted to a long-term care facility on February 4, 2020, and resided there during the times relevant to this matter. (R-1 at 3). Prior to admission, Petitioner resided in their home, which they owned outright. Based upon the 2020 tax assessment, the fair market value of Petitioner's home was \$402,959.01 (R-21). On July 13, 2020, Total Home Inspection Services, LLC issued an inspection report for Petitioner's home listing multiple repair items. G.P. testified that the market conditions during the COVID-19 pandemic necessitated comprehensive renovations to enhance Petitioner's home's resale value.

On October 28, 2021, a mortgage was recorded on Petitioner's home listing Petitioner as the borrower and G.P. as the lender and provided that "in exchange for a loan that [Petitioner] received, [Petitioner] promise[d] to pay up to ...\$400,000...plus interest." On December 6, 2021, Petitioner's home was sold for \$651,000 (R-7). The Closing Disclosure form reports that \$397,512.60 was due to G.P. as a payoff for his loan.

(R-7). G.P. produced a promissory note purportedly detailing a \$400,000 loan from G.P. to Petitioner with Petitioner's home as collateral. Described as a line of credit bridge loan, the document allows for draws up to \$400,000 to cover expenses. While G.P. signed the document on January 11, 2021, it was not signed by Petitioner. G.P. testified that in order to address the medical expenses and lack of funds, he secured this line of credit against Petitioner's home mortgage, intending to utilizing it for Petitioner's care expense and necessary house repairs. (R-6). From January 30, 2020, to September 21, 2021, G.P. deposited funds into Petitioner's account totaling \$371,500. (R-8, at 1.). As detailed in G.P.'s submission, the transactions included payments to the nursing facility, the Borough of Oradell Tax Offices, and six contractors. (R-8, P-4).

[P.] Properties, operated by G.P., a professional contractor, was allegedly hired to handle and oversee all construction to prepare Petitioner's home for sale. Accordingly, G.P. testified he oversaw a team of contractors who executed extensive repairs on Petitioner's home. G.P. further testified that he paid for supplies and materials for these repairs, and he was entitled to payment at fair market value for the work and materials provided. G.P. supplied Home Depot receipts documenting purchases without a clear explanation of the items, what they were used for, or that they were used for Petitioner's home.

Petitioner subsequently issued three checks to G.P. ostensibly for materials and services directly procured by G.P. In order to explain the January 22, 2021 check for \$14,511.67, Petitioner produced an undated form marked "proposal and acceptance" for "materials reimbursement," signed only by G.P. Further, to explain a September 21, 2021 check for \$23,358.46, Petitioner produced an unsigned and undated form marked

"proposal and acceptance" for "materials reimbursement." Neither form details the materials or reimbursement terms. In support of a January 22, 2023 check for \$147,348.90, Petitioner supplied an undated and unsigned "Proposal" described as "renovation of entire house," listing numerous tasks. (R-12).

The ALJ found that despite G.P.'s intentions to assist Petitioner financially, discrepancies emerged regarding the documentation and agreements related to the financial transactions and reimbursement amounts. The absence of conclusive evidence, such as a signed loan repayment agreement and detailed reimbursement documentation, raised doubts about the veracity of G.P.'s testimony. Specifically, there was no existing agreement detailing that Petitioner would reimburse G.P. for his labor or expenditures or G.P.'s rate of pay. Instead, Petitioner and G.P. signed a mortgage agreement, resulting in G.P. receiving a significant portion of the house-sale proceeds. Further, G.P. could not sufficiently demonstrate that the receipts and invoices for his purchases equaled the amounts in question, nor could G.P. sufficiently justify his billed amount of \$147,384.90. Despite their efforts to support Petitioner's care financially, the lack of documentary evidence supports the conclusion that the transactions did not constitute repayment of a bona fide loan exempt from the transfer penalty.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's initial decision. Further, I FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made in order to establish Medicaid eligibility, and, therefore, the imposed penalty period is appropriate.

THEREFORE, it is on this 25th day of JUNE 2024

ORDERED:

That the Initial Decision is hereby ADOPTED.

*Gregory Woods*

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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance and Health Services