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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

G.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :
AND HEALTH SERVICES AND :
MIDDLESEX COUNTY BOARD :
OF SOCIAL SERVICES, :
RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 15082-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is March 13, 2025.

This matter arises regarding Petitioner's request for a caregiver exemption. The Middlesex County Board of Social Services (Middlesex County) denied Petitioner's caregiver exemption pursuant to N.J.A.C. 10:71-4.10(d)(4)(i) and imposed a 1,207-day penalty for transferring Petitioner's home valued at \$531,235.17, to their son, A.C.

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]ransfer 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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the

individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)4. This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care to a parent while "residing in such [parent's] home" that prevented institutionalization for at least two years, the transfer is exempt from the penalty. 42 U.S.C. § 1396p(c)(2)(A)(iv). The care provided must exceed normal personal support activities, and Petitioner's physical or mental condition must "require special attention and care." N.J.A.C. 10:71-4.10(d).

The following facts are derived from the record. A.C. moved into Petitioner's home in September 2011 and has lived there since. ID at 3. In October 2019, Petitioner had a bad fall but could not see a doctor until August 2020 due to COVID-19. (P at 0107.) On August 26, 2020, Petitioner was examined by their physician, Dr. Bruce Soriano, and was diagnosed with a fractured hip and short-term memory loss. Ibid. In November 2021, Petitioner was diagnosed with senile dementia. (P-B at 0105.) On June 8, 2022, Petitioner was seen by Dr. Rajesh Patel, D.O., and it was assessed that Petitioner suffered from unspecified dementia with behavioral disturbances, abnormalities with gait and mobility, and needed assistance with personal care. (P-B at 0029-0030.)

From 2020 through 2022, A.C. was Petitioner's sole caregiver who helped implement those plans of care and assisted Petitioner with their Activities of Daily Living (ADLs), including helping them bathe and dress, supervising and administering her

medications, preparing and feeding her meals, toileting, cleaning her, changing the bed sheets when she soiled herself, and helping her in and out of bed and around the house as needed. ID at 4. A.C. also took Petitioner to the doctors' appointments, handled all the finances, and did laundry for the household. Ibid.

In September 2023, A.C. hired a private nurse, Salome Kumah, specializing in generic home care, to assist with Petitioner's care after he started working part-time at Middlesex County College (MCC). (P-C.)

On November 1, 2023, Dr. Rajesh Patel wrote a letter stating his medical opinion that Petitioner has not been independent for at least two years, A.C. has been integral in their care and well-being, A.C. assists Petitioner with ADLs such as bathing, grooming, and toileting, A.C. administers Petitioner's medications, keeps track of their medical appointments, prepares and serves their meals. (P-A at 0006.) Dr. Patel concluded that Petitioner having A.C. as their caregiver allows Petitioner to remain in a familiar and comfortable environment. Ibid.

On October 24, 2023, eighty-eight years old Petitioner transferred the title of their home to A.C. for consideration of \$100. ID at 1. On November 13, 2023, Petitioner applied for Medicaid Managed Long-Term Services and Supports (MLTSS) care. (R-A.) On February 1, 2024, Middlesex County sent Request for Information (RFI) letter asking for documents supporting Petitioner's position that the caregiver exemption should apply. (R-E.) In response, Petitioner provided Middlesex County with medical records showing Petitioner's diagnosis of senile dementia, a copy of A.C.'s driver's license showing he has resided at the same address since March 30, 2021; a written summary of A.C.'s work history from 2019 through February 2024; the W-9 for 2024 for nurse Kumah; A.C.'s 2022 W2 and A.C.'s 2022 tax return. (P-D.) On September 23, 2024, Middlesex County

approved Petitioner's application for Medicaid benefits with an effective date of March 1, 2024; however, it assessed a 1,207-day penalty for transferring Petitioner's home valued at \$531,235.15 to A.C. (R- B.)

On October 3, 2024, Petitioner appealed Middlesex County's determination and requested a fair hearing. ID at 2. The hearing was held on January 7, 2025. Ibid. Here, Petitioner argues that the transfer of the home to A.C. should be exempt from the imposition of a penalty on Petitioner's receipt of Medicaid benefits as a result of A.C. being Petitioner's caregiver for the two years before the eligibility date, pursuant to N.J.A.C. 10:71-4.10(d)(4)(i).

The Initial Decision discussed that the state regulation is intended to provide applicants relief from the asset-transfer penalty when a child cares for a parent in the parent's home for at least two years, thereby delaying the parent's institutionalization or home care paid for by the government. The applicant bears the burden of establishing entitlement to the exemption. ID at 8. The Administrative Law Judge (ALJ) found that although a few medical notations indicate that at different times in 2022 and 2023, Petitioner was more mobile or independent than at other times, those notes are insufficient to show Petitioner's level of independence with ADLs and the progression of their dementia. Ibid. The medical records must be considered in totality to appreciate Petitioner's health condition and the level of assistance that Petitioner has needed since October 2019. Ibid. Petitioner was formally diagnosed with senile dementia by Dr. Soriano in November 2021. Ibid. Medical records reveal that Petitioner's immobility prevented them from leaving the house. Ibid. Medical records further indicate that when Petitioner did appear for medical visits, they were confused, agitated, and combative to the point that Dr. Patel was not able to treat her. Ibid.

The ALJ concluded that Petitioner has met its burden to prove that the child caregiver exemption of the asset-transfer penalty applies under N.J.A.C. 10:71-4.10(d)(4). ID at 9. I agree with the ALJ's findings.

Based on the record before me and for the reasons enumerated above, A.C. qualifies for the caregiver exemption because he moved into Petitioner's home and lived with Petitioner for at least two years immediately prior to Petitioner applying for MLTSS. Petitioner's home was A.C.'s primary home since 2011. The level of care provided by A.C. was great enough that it delayed Petitioner's need for nursing home care for those two years. A.C. assisted Petitioner with ADLs such as toileting, bathing, dressing, personal hygiene, transitioning from one position to another, mobility, meal preparation, grocery shopping, and medication management. While A.C. was the one who provided Petitioner with full-time care, he hired part-time assistance when he started working part-time at MCC. Petitioner met their burden in showing that the care Petitioner needed for the two years prior to institutionalization exceeded normal personal support activities and Petitioner's physical or mental condition "required special attention and care" as required by the regulations in order to qualify for the exemption. A.C. was Petitioner's primary caregiver who provided care to Petitioner beyond normal support that Petitioner needed institutionalization level of care for the two years immediately preceding institutionalization. The documentation provided by Petitioner supports a finding that Petitioner met that standard for the entire two-year period prior to applying for MLTSS.

I hereby ADOPT the Initial Decision and FIND that the transfer penalty in this matter should be reduced by \$531,235.15, the value of Petitioner's property that was transferred to A.C., as Petitioner has shown that they qualify for the caregiver exemption related to this transfer, pursuant to N.J.A.C. 10:71-4.10(d).

Thus, the Initial Decision is hereby ADOPTED, and this matter is RETURNED to Middlesex County to calculate Petitioner's Medicaid benefits without transfer penalty and issue a new eligibility notice accordingly.

THEREFORE, it is on this 3rd day of MARCH 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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