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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

J.D.,

PETITIONER,

v.

BURLINGTON COUNTY BOARD OF
SOCIAL SERVICES AND DIVISION
OF MEDICAL ASSISTANCE AND
HEALTH SERVICES,

RESPONDENT.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. No. HMA 04328-2025

(ON REMAND HMA 11886-2023)

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 28, 2025, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. Here, Burlington County Board of Social Services (Burlington County) imposed a transfer penalty of 35 months, 23 days for the transfer of assets totaling \$412,658.02. ID at 1. The transfer of assets stem from cash transfers of \$30,000 on March 9, 2019, January 11, 2019, January 4, 2020, and January 5, 2021, \$32,000 to T.D., Petitioner's son on January 4, 2022, \$33,250 on January 20, 2023, and \$227,408.02

for the transfer of Petitioner's primary residence.¹ Ibid. The Initial Decision upheld the imposition of the transfer penalty for the cash transfers totaling \$185,250 but determined that the property transfer should be exempt as allowable pursuant to N.J.A.C 10:71-4.10 (d). ID at 1, 2.

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 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. In particular, 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

¹ Petitioner is not disputing the transfer penalty imposed for the cash transfers made during the lookback period. ID at 1.

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 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 be such as to "require special attention and care." N.J.A.C. 10:71-4.10(d).

In determining whether Burlington County was correct to impose a transfer penalty resulting from the transfer of Petitioner's property to T.D. pursuant to N.J.A.C. 10:71-4.10(d), a review of the totality of circumstances must be considered. In 2009, Petitioner suffered a traumatic brain injury. ID at 2. Based on Petitioner's condition she required assistance with activities of daily living such as bathing, dressing, toileting, transferring, bed mobility and locomotion. Ibid. T.D. has resided with Petitioner since 2009 and provided "home care beyond normal personal support activities." Ibid. Petitioner's medical condition and need for assistance was confirmed by her treating physicians, Alan Turtz, M.D. (Dr. Turtz) and Gabriella D'Ambrosio, PA-C (D'Ambrosio). Dr. Turtz certifies the following: 1) he has treated Petitioner from 2009 through 2022 for traumatic brain

injury, seizures, and wound healing problems, 2) T.D. has resided in the home with Petitioner during this timeframe and 3) without T.D.'s care, Petitioner would have required nursing home placement based on her medical condition. P-19. The certification provided by Gabriella D'Ambrosio, PA-C (D'Ambrosio), notes that she treated Petitioner from 2010 through 2022, and that Petitioner has COPD, compression fracture, osteoporosis, epilepsy and hypertension. P-20. In addition, Dr. D'Ambrosio certifies that without T.D.'s assistance, Petitioner would have required nursing home placement two years prior to 2022. Ibid. On January 12, 2023, Petitioner transferred ninety-nine percent ownership of her property to T.D. for consideration of one dollar. P-5. Petitioner retained one percent ownership of the property. Ibid. Burlington County estimated the value of Petitioner's home to be \$227,408.02. ID at 1. Nothing in record shows that Petitioner disputes this valuation. Petitioner, however, does dispute the imposition of the transfer penalty and argues no penalty should apply.

An Initial Decision was issued that determined Petitioner improperly transferred \$185,250 in assets during the lookback period and modified the penalty to 16 months, 2 days.² However, by Order dated February 24, 2025, the undersigned reversed that Initial Decision and remanded the matter for additional proceedings. The Order of Remand found that the file was missing documents entered as evidence such as medical records from Dr. Turtz designated as P-25 and Certification of Dr. Turtz designated as P-19. In addition, the Order requested a decision based on facts and conclusions of law and requested that the record be further developed with evidence.

On remand, the record was supplemented with the missing information and included other evidentiary documentation. Upon review, the supplemental evidence provided was sufficient to consider the appropriateness of the transfer penalty imposed.

² The first Initial Decision filed HMA 11886-23 was dated November 27, 2024.

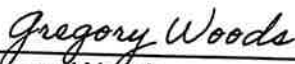
And, although no full written Initial Decision was provided, the decision did include additional facts and applicable law relating to the caregiver exemption, as set forth in N.J.A.C. 10:71-4.10(d) as requested. As such, consistent with this Initial Decision, Petitioner has shown through credible documentary evidence that T.D. provided care essential to Petitioner's health and safety that exceeded normal person support activities which allowed for Petitioner to reside in her home rather than in an institution for a period of two years prior to entering a facility.

Thus, based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision and RETURN to Burlington County to make the following determinations: 1) determine the transfer penalty excluding the \$227,408.02 transfer penalty imposed which represents the value of Petitioner's property and 2) determine the specific number of days of ineligibility in accordance with this decision.

THEREFORE, it is on this 21st day of July 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED and RETURNED as set forth above.



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