

upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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. 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 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 reviewing the caregiver exemption, the Appellate Division noted that the "receipt of Medicaid benefits is not automatic. Understanding the State's need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria as satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application." M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17.

In M.K., the court had "no doubt [the daughter] extended love and care to her mother that added to M.K.'s comfort, welfare and happiness during those years when she was living in her own home, despite significant medical challenges". M.K., Slip op. at 17. However, during the two years prior to entering a nursing home, M.K. moved in with her son for a period of five months. The court found that as "Medicaid is an intensely regulated program' and its requirements are strictly enforced," a five-month break in "the

mandated two-year time period for care” meant that the caregiver exemption had not been met. M.K., Slip op. at 15 (citing H.K. v. State, 184 N.J. 367, 380).

In this case, Petitioner was diagnosed with mild dementia in 2017. ID at 6. Petitioner’s condition progressed over time to advanced dementia, cognitive impairment and Alzheimer’s dementia. Ibid. Despite this diagnosis, Petitioner remained in her home with her son, W.T., until December 2021 when she fell and had to be hospitalized. ID at 6, 8. In January 2022, Petitioner was admitted to the nursing home. ID at 8. On April 29, 2022, Petitioner submitted her third Medicaid application. J-1.² On June 7, 2022, Petitioner’s Medicaid application was approved effective April 1, 2022, with retroactive coverage for the period of March 1, 2022, to March 31, 2022. J-3. As part of Petitioner’s Medicaid application, W.T., Petitioner’s son, made a request for the caregiver child exemption which would permit a transfer of Petitioner’s home without penalty.³ ID at 5. To support this request, Petitioner provided letters from W.T. and Petitioner’s physician, Dr. Rao Pasupuleti, describing the care Petitioner received from W.T. J-17. Dr. Pasupuleti explained that Petitioner suffered from dementia and needed assistance from W.T. with activities of daily living, to include meal preparation, feeding, assistance with bathing, toileting, dressing, daily hygiene, grooming, daily medications, managing finances and assistance with mobility. Ibid. In addition, Dr. Pasupuleti noted that because W.T. resided with Petitioner, she was able to remain in the home and did not need to be placed in a [nursing] facility. Ibid. W.T.’s letter dated July 2, 2021, mirrored Dr. Pasupuleti’s letter with regard to Petitioner’s daily needs and added that prior to COVID Petitioner attended Senior Day Care while he worked. Ibid.

² The exhibits marked J-1 through J-19 represent the revised Stipulation of Facts filed by the parties on December 18, 2024.

³ No specific details were provided regarding the home Petitioner sought to transfer to W.T. without penalty.

The Initial Decision upheld Mercer County's denial of W.T.'s caregiver exemption request, and I concur. While it appears that W.T. cared for Petitioner in the years prior to Petitioner being institutionalized, it is clear that W.T. did not provide care to Petitioner while living in Petitioner's home during the entire two years immediately preceding Petitioner entering the nursing facility, as required by the regulation. As noted by the Administrative Law Judge (ALJ), the relevant period of time in this matter is during the period of August 2021 through December 2021. ID at 14. During this time frame, W.T. testified that Petitioner was unable to go to daycare, so he had nurses come to the home to shower her and the neighbor checked in on her, but Petitioner was on her own until he returned from work after 3:00 p.m. ID at 8. On cross-examination, W.T. testified that Petitioner had fallen before he came home, but he could not remember when. Ibid. W.T. further testified that when Petitioner fell no one was home and there were no cameras at the time. Ibid. Ultimately, the ALJ determined that W.T.'s testimony was "contradictory and confusing" regarding the timeline of events, "self-interested and unsupported by any documentary evidence or corroborating testimony," and thus, unbelievable. ID at 9. Thus, according to the record, W.T. has failed to establish each requirement of the caregiver exception to obtain its application in accordance with the regulation. N.J.A.C. 10:71-4.10(d)4.

On February 8, 2025, Petitioner's attorney filed the following exceptions to the Initial Decision:

1) The Petitioner takes exception to a statement in the case which states that "W.T. failed to prove that J.T. was receiving a level of care equivalent to what she would have received in a nursing home" and argues that standard should not be used to determine whether the childcare exemption should apply. To support his claim, Petitioner relies on V.P. v. Dept. of Human Services, N.J. Super., App. Div., No. A-2362-09T1, (Sept. 2,

2011). However, W.T.'s reliance on V.P. is misplaced. The V.P. court recognized that the ALJ determined that all of Petitioner's witnesses were believable, and the record had been supplemented with credible evidence. Unlike V.P., the ALJ in the present matter did not reach that same conclusion. In fact, the ALJ determined W.T.'s testimony was contradictory and confusing when it came to the timeline of events. ID at 9. The ALJ also concluded that W.T. failed to provide the level of care from August 2021 through December 2021 consistent with the regulation and therefore is ineligible for the caregiver exemption. ID at 14. The comment Petitioner takes exception with was referenced in the Initial Decision as an argument made by Mercer County and was not the standard used by the ALJ to determine whether the childcare exemption should apply to this case. Here, the ALJ reviewed the evidence in totality based on the requirements as set forth in N.J.A.C. 10:71-4.10(d). As such, Petitioner's assertion that the wrong standard had been applied in considering the childcare exemption is without merit and was denied based on the evidence, law and facts.

2) The Petitioner takes exception to the ALJ's determination that "J.T. was "unattended and unmonitored" during the period of time when the monitor cameras were not installed." Petitioner testified that J.T. was unable to attend adult daycare after her fall. ID at 8. Petitioner also testified that, nurses came to the home to "shower" J.T. and from August to December 2021, Petitioner was on her own, but her neighbor checked in. Ibid. I agree with the ALJ's determination that J.T. was unattended or unmonitored. W.T. admitted that no one was home when J.T. fell. Petitioner also admits no cameras were installed at the time and that J.T. was on her own. Ibid. As such, the ALJ's determination that J.T. was unattended and unmonitored were relevant facts considered by the ALJ in reaching the decision that the requirements for the caregiver exception had not been met.

3) The Petitioner takes exception to the comment that W.T. "never kept a daily log, and his recollection of these events is all by memory." The ALJ notes in the Initial Decision that W.T. never kept a daily log and as a result determined that W.T.'s recollection of the timeline of events was based on his memory. I agree with the ALJ's decision that W.T. testified based on his memory since W.T.'s testimony was unsupported by any documentary evidence or corroborating testimony. ID at 9. Here the ALJ made factual findings by evaluating the credibility of witnesses consistent with the mandates set forth in N.J.S.A. 52:14-B10 (c).

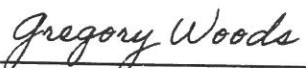
The requirements set forth in N.J.A.C. 10:71-4.10(d)4 are clear and unambiguous. W.T. failed to provide care and safety during the two-year period at issue when Petitioner was left primarily on her own from August 2021 through December 2021 when she was hospitalized after falling and thereafter was admitted to the nursing home. This four-month timeframe wherein Petitioner was left alone at home unattended or monitored while W.T. was at work, fails to provide the level of care required by N.J.A.C. 10:71-4.10(d)4. Accordingly, Mercer County appropriately denied W.T.'s request for application of the caregiver exemption in this matter.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 29th day of APRIL 2025

ORDERED:

That the Initial Decision is hereby ADOPTED.



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