

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.

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.

In this matter, Petitioner seeks a hardship exemption pursuant to N.J.A.C. 10:71-4.10 (q)(1) which provides:

1. For the purposes of this chapter, undue hardship shall be considered to exist when:

- i. The application of the transfer of assets provisions would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered. Undue hardship may also exist when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life; and
- ii. The applicant/beneficiary can irrefutably demonstrate the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred. Ibid.

To make this determination, a review of the facts must be considered. Here, Petitioner and her daughter, D.P. owned property in Margate, New Jersey as joint tenants. ID at 4. In 2016, prior to applying for Medicaid, Petitioner executed a Durable Power of Attorney authorizing her daughter D.P. to act as her attorney in fact and agent. Ibid. In 2019, Petitioner entered the nursing home. Ibid. Petitioner filed for Medicaid on March 19, 2020. Ibid. On June 26, 2020, D.P. sold the property in question for \$400,000 and received \$319,806.51 from the sale. Ibid. The funds from the sale of the home were deposited in Ocean First Bank account #8826, jointly owned by Petitioner and D.P. Ibid. On July 3, 2020, D.P. withdrew \$258,182 and \$3,000 from the joint account. Ibid. On September 18, 2024, Cape May County sent a revised Eligibility Notice.¹ R-1. On June 20, 2024, Petitioner's DAR requested a transfer penalty be imposed and requested a hardship waiver since D.P. was not responsive to questions about how the funds had been used. Ibid. On or about September 4, 2024, Future Care Consultants filed a civil complaint against D.P. in the amount of \$231,028.86 plus interest and attorney's fees for D.P.'s conversion of the proceeds of the sale of the property. ID at 5. Petitioner passed

¹ The revised notice changed the penalty end date from October 20, 2024 to September 19, 2024. R-1.

away in November 2024. ID at 3. The case was placed on inactive status to allow an Administrator of Petitioner's estate to be appointed. Ibid. On February 25, 2025, the Surrogate's Court appointed Daniel S. Reeves, Esq. (Reeves), as Administrator of Petitioner's estate. ID at 1. After being appointed, Reeves appointed C.H. to be his Designated Authorized Representative (DAR) to pursue Petitioner's Medicaid eligibility.² ID at 1.

The Administrative Law Judge (ALJ) notes Petitioner's assertion that the funds were not available to her because Petitioner's daughter misappropriated the funds. ID at 9. The ALJ also notes that "there was a gap of over three years between the deposit into the joint account, accessible to [Petitioner] and any action to recover the funds. Ibid. As a result, the ALJ determined that the funds in the Ocean First Bank account were "available or under the control of the Petitioner and her DAR," and that the transfer penalty imposed by Cape May County was appropriate. ID at 9,10. I agree. The transfers at issue stem from the sale of Petitioner's home for \$400,000 which was jointly owned by Petitioner and D.P. The agency determined that Petitioner failed to account for \$159,903.25, which represents one half of the \$319,806.51 received from the sale of the property and deposited into account #8826 jointly owned by Petitioner and D.P. ID at 4. It is well established that the transfer of an asset jointly held with another person shall be considered transferred by the individual. N.J.A.C. 10:71-4.10(o).

According to the evidence, Petitioner filed for a hardship waiver while she was alive. ID at 7. However, to qualify for the hardship waiver Petitioner must satisfy both prongs of the regulation. N.J.A.C. 10:71-4.10 (q)(1). As to the first prong, Petitioner

² It should be noted Daniel Reeves, Esq. appointed C.H. as his DAR to pursue Medicaid eligibility. Richard Kozel, Esq., Petitioner's attorney represented the DAR before Petitioner passed away and although an argument could be made there exists a conflict with Mr. Kozel's representation of Future Care and Petitioner, that issue was not raised on appeal.

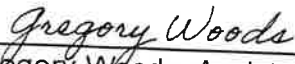
signed a Certification two days prior to her death reporting that she was "receiving excellent care at the facility." No evidence was presented that Petitioner would be deprived of "the necessities of life or that the facility was threatening to discharge her." ID at 7, 8. With regard to the second prong, Petitioner must show that the transferred assets are beyond her control and cannot be recovered. According to the evidence, Petitioner applied for Medicaid on March 19, 2020. The funds from the sale of the property were deposited into Ocean Bank on June 26, 2020, and withdrawn on July 3, 2020. ID at 4. More than three years elapsed from the time D.P. sold the property and withdrew the funds from the joint bank account. ID at 9. At all relevant times, Petitioner maintained control over the joint bank account. Ibid. Clearly, the DAR should have been on notice regarding withdrawals of large sums of money from the joint bank account, and as Petitioner's representative is tasked with handling Petitioner's affairs including financial disclosures. Petitioner fails to demonstrate that the transferred assets were beyond her control and that the assets cannot be recovered pursuant to N.J.A.C. 10:71-4.10 (q)(1).

Thus, based upon my review of the record, and for the reasons set forth herein, I hereby ADOPT the Initial Decision in accordance with this decision as Petitioner has failed to satisfy the requirements as set forth pursuant to N.J.A.C. 10:71-4.10 (q)(1).

THEREFORE, it is on this 9th day of SEPTEMBER 2025,

ORDERED:

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



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