

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.

Petitioner filed three Medicaid applications. The first application dated October 13, 2020, serves as the baseline that triggers the look back period. The second application was filed on September 19, 2022, and the third application was filed on March 9, 2023. Only the third application dated March 9, 2023, is the subject matter of this appeal wherein

eligibility was established, and a transfer penalty was imposed. Petitioner concedes to \$359,617.16 of the transfer penalty imposed, but challenges \$102,901.06. R-15. The issue regarding the \$102,901.06 stems from withdrawals made from the Valley National Bank account #2240, jointly owned by Petitioner and F.J., Petitioner's spouse. Ibid.

The Administrative Law Judge (ALJ) determined that the transfer penalty imposed had to be modified. ID at 17. More specifically, the ALJ determined that no transfer penalty should be assessed against the following transfers: 1) the two checks written by F.J., Petitioner's spouse payable to C.G. totaling \$2,009, 2) the non-check transfer of \$2,000 dated December 17, 2016, 3) check #6853 Petitioner wrote to herself for \$3,026.06, or 4) the 83 checks F.J. wrote as cash for his personal needs which totaled \$94,941 because these transactions were not transfers for less than fair market value. Ibid. As for the remaining transfers, the ALJ determined that Sussex County was correct to assess a transfer penalty for the two checks Petitioner wrote to R.J., Petitioner's son totaling \$525, and the four checks written by Petitioner to Dr. B for R.J.'s medical care in the amount of \$400 since these transfers were gifts. Ibid. I agree. Only tangible compensation with intrinsic value can be considered when determining whether an applicant transferred property for fair market value. N.J.A.C. 10:71-4.10(b)6i. Accordingly, the two checks Petitioner wrote to R.J. totaling \$525, and the four checks written by Petitioner to Dr. B for R.J.'s medical care were gifts to her son and were not exchanged for fair market value.

Both parties filed exceptions in this matter. First, Sussex County asserts that the ALJ was incorrect to determine the items set forth above should be excluded from imposition of a transfer penalty. In addition, Sussex County further asserts the ALJ improperly shifted the burden of proof from Petitioner to Sussex County since the amended transfer penalty of 1202 days totaling \$462,518.22 was fully supported by the

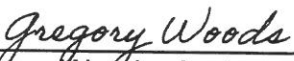
facts and all applicable regulations. See Respondent's Exceptions at 3. In response, Petitioner asserts that the Initial Decision was correct to determine that Petitioner had met her burden of proof because [R.S.] provided credible testimony, and presumptions raised had been rebutted based on the proofs provided. Petitioner is correct. Based on the evidence presented and testimony provided, Petitioner has successfully demonstrated that the transferred funds were made exclusively for another purpose other than to qualify for Medicaid.

Thus, based upon my review of the record, and for the reasons set forth herein, I hereby ADOPT the Initial Decision and RETURN the matter to Sussex County to issue a new determination letter in accordance with this decision.

THEREFORE, it is on this 18th day of FEBRUARY 2025,

ORDERED:

That the Initial Decision is hereby REVERSED in part as set forth above.



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