



*State of New Jersey*

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
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*Governor*

ELIZABETH CONNOLLY  
*Acting Commissioner*

KIM GUADAGNO  
*Lt. Governor*

MEGHAN DAVEY  
*Director*

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

J.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

& HEALTH SERVICES and

CAMDEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 9397-2015**

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is June 13, 2016, in accordance with an Order of Extension.

This matter concerns a series of transfers totaling \$75,650 from Petitioner's account from September 2009 through November 2012. Petitioner was able to demonstrate that \$1,750 was for home repairs. As such Camden reduced the penalty amount to \$73,900 and imposed a 222 day penalty from September 1, 2014.

Petitioner alleged that the transfers should not be penalized for a number of reasons, including that she had a sudden onset of disability that caused her to be institutionalized. Her husband, A.D., testified that \$14,900 of the transfers was paid to A.B. for cleaning services. From September 2009 through November 2014, A.D. wrote checks to A.B. for amounts ranging from \$1,000 to \$7,000 See R-1 at 10. Petitioner's husband also argued that \$24,700 in checks written to his daughter paid for his grandchildren's parochial school education.

The Initial Decision upheld the penalty for all the transfers except \$20,700 of the checks written to Petitioner's daughter. In affirming the penalty for \$53,200, the Initial Decision noted there was no evidence of sudden onset of Petitioner's disability. ID at 7. Moreover, there were inconsistencies and contradictions in the testimony presented by Petitioner as to the fair market value for the cleaning services and whether cash withdrawals were for the couple's sole benefit. ID at 13. Despite denying any sudden onset of illness, the medical records demonstrate that Petitioner's health declined over a number of years that resulted in hospitalization and rehabilitations. The clinical notes on December 14, 2011 show a recent hospitalization and that Petitioner had difficulty walking and talking. P-4. There is then a gap of any medical notes from October 2012 until April 2014. However the physician treating Petitioner after April 2014 states that

"[i]n the several years that I have been caring for her I have never seen her ambulate."

P-3.

Petitioner's husband wrote checks to cash totaling \$25,600. ID at 12. While these were described as being used on "personal items and hobbies", Petitioner's bank records show "regular cash debits for hundreds of dollars, as well as use of both the debit card and credit card, for personal expenses." ID at 12. There was no evidence to support that the \$25,600 was used for the couple's expenses.

In addressing the \$14,900 paid for cleaning services, the Initial Decision found that "there is insufficient reliable documentation to evidence clear proof of established remuneration or the market value of services performed." ID at 8. A.B. claims she charged \$28 an hour for her services but provided no invoices or schedule as to what services she performed much less that this amount was the fair market value. ID at 4. I concur with the Initial Decision finding that the "[c]hecks written to [A.B.] were inconsistent at best and altogether unsupported by dependable proof of due consideration" and uphold the penalty. ID at 13.

Petitioner's claim that her husband gave \$20,700 to their daughter for parochial school education was determined to have met the presumption that it was transferred solely for a reason other than applying for Medicaid. However, I find no support for this finding in the record. The tuition bills do not correspond with the check amounts nor do the bills coincide with the dates that the checks were written. There were seven checks totaling \$24,700 made out to Petitioner's daughter. Petitioner's husband admits that a check written for \$4,000 on April 22, 2014 was not for tuition and was a gift. ID at 7.

That leaves six checks totaling \$20,700. Of those six remaining checks, three were written in June and two were written in July. R-1 at 10. Since June and July are at the end of the school year, tuition had already been paid in full so that the checks were not applied to an outstanding tuition bill. When checks were written during the school year, there is no corresponding payment for the same amount to the school. For example, the sixth check for \$3,000 that was written November 5, 2012 does not have corresponding payment of \$3,000 to the school in November 2012. Compare at R-2 at 19 with R-3 at 46. Moreover, the total tuition payments for the 2012-2013 school year were \$1,485.10. R-3 at 46.

It appears checks were written to Petitioner's daughter without regard to the tuition due and owing or the fact she had a payment plan with the school. Five of the checks were written in June or July when there was no tuition obligation. The April 22, 2014 check for \$4,000 is preceded and followed by checks to the daughter for \$4,000 or \$4,500. In agreeing that the April 22, 2014 check was not for tuition, Petitioner's husband fails to say why he gifted that check for \$4,000 when he testified that "[n]one of the checks were for gifts, something he could not afford." ID at 5. There is nothing connecting the time or the amount of these checks to the tuition bills in the record. As such, I FIND there is no basis that the checks were made solely for a reason other than qualifying for Medicaid.

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THEREFORE, it is on this <sup>8th</sup> day of JUNE 2016

ORDERED:

That the Initial Decision is hereby ADOPTED as to the findings that Petitioner failed to demonstrate fair market value or rebut the presumption that the transfer was done for Medicaid purposes for \$53,000; and

That the Initial Decision is hereby REVERSED as to the findings regarding the transfer of \$20,900; and

That Petitioner is subject to a transfer penalty for \$73,900.

  
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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services