



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Trenton, NJ 08625-0712

CHRIS CHRISTIE
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**

H.R.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

ATLANTIC COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 15383-16

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the documents in evidence. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is January 30, 2017 with in accordance with N.J.S.A. 52:14B-10 which requires an

Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on December 16, 2016.

At issue is a 257 day penalty imposed due to Petitioner's transfers totaling \$85,639.19. In determining Medicaid eligibility for someone seeking institutionalized benefits, the 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.¹ N.J.A.C. 10:71-4.10 (c). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted "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). Here, Petitioner is seeking to show that she received fair market value for the transferred assets by asserting that the transfers to her son were compensation for caregiving services.

Claims that transfers were payment for caregiving services provided in the past by family members are unsupported by the record. In accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free in the past are presumed to have been intended to be delivered without compensation. If

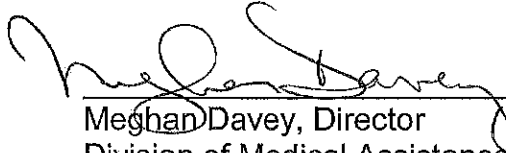
¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

payment is to be made there must a preexisting written agreement to pay for such services at a fair market rate. No such document was presented here.

THEREFORE, it is on this 24th day of JANUARY 2017,

ORDERED:

That the Initial Decision affirming the transfer penalty of \$85,639.19 is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services