

**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
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ELIZABETH CONNOLLY  
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MEGHAN DAVEY  
*Director*

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

R.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

HUNTERDON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 1885-2016**

**and OAL DKT. NO. HMA 1031-2017**

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. Petitioner filed exceptions. Procedurally, the time period for the Agency Head to file a Final Decision is July 6, 2017, in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty. Hunterdon County had set a penalty of twenty-two months and twenty-one days beginning on

November 1, 2015. Petitioner appealed that action. Petitioner filed another application in November 2016 based on his position that the penalty was over. Hunterdon County denied that application as there was a pending transfer penalty ending on September 21, 2017. Petitioner appealed both actions and the matters were consolidated.

There are two types of transfers in this case. By deed dated April 30, 2013, Petitioner transferred one-half ownership of his home to his son. On June 7, 2013, \$58,205.07 was transferred from Petitioner's bank account. See R-8 and ID at 5, which incorrectly states June 7, 2017. There is a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. N.J.A.C. 10:71-4.10(i). 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(l)2. Petitioner does not claim that the transfers were for some other purpose but rather argues that the valuation of the transferred assets was incorrect and that he is entitled to credit for the partial return of the transferred assets.

Petitioner claims the one-half share of the property should be valued at \$150,450.88. However, he and his wife's estate have valued each of their shares of the home at \$168,819 in other legal documents. Petitioner's valuation is included in the list of assets submitted to Superior Court as part of the guardianship accounting. P-13. His

estate used the same valuation on the New Jersey State tax form L-9. P-7. It is unclear how this value was reached. However, for Medicaid purposes, absent a certified appraisal, the equity value of real property is "the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any..." N.J.A.C. 10:71-4.1(d)(1)(iv). There are no encumbrances on the property so the assessed value of \$326,800 should be used in the calculation.

There does appear to be an error with the equalization ratio used to value Petitioner's transfer of the home to his son. The Table of Equalized value is determined in October of the prior year and certified for use in January of the applicable year. See <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>. For tax year 2013, the ratio of assessed value to true value was 105.82% not 107.68%. This results in a transfer valued at \$154,413.15.

In exceptions, Petitioner takes issue with the calculations in the Initial Decision. However, there are no citations to the documents in evidence to support the allegation that the Initial Decision was incorrect. However, the federal statute requires the entire transferred account be returned to Petitioner, which was not done here. Rather Petitioner wants the penalty to be reduced each month his son pays the facility during the penalty period. This is not simply permitted.<sup>1</sup>

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<sup>1</sup> Though not addressed below, Petitioner's son violated the terms of the Qualified Income Trust (QIT) by depositing \$15,200 into his QIT account in March 2016. P-18. The inclusion of resources does not allow the QIT to qualify as an excluded trust in accordance with 42 U.S.C. § 1396p(d)(4)(B). See also State Medicaid Manual § 3257.7C. When Petitioner reapplies for benefits, Hunterdon County should review the QIT account and determine if it still meets the federal statute.

Any reduction of the transferred funds is predicated on whether “[a] satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual.” 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). See also N.J.A.C. 10:71-4.10(e)(6)(iii). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015, (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty “lacked any legal support”).

Petitioner’s contention that the transferred amount should be reduced by guardianships fees is puzzling. The two transfers occurred in April 2013 for the transfer of the house and June 2013 for the cash transfer. Petitioner’s son became his guardian in November 2012. In reality, Petitioner is seeking to offset those transfers by future guardianship fees that had not been earned at the time of the transfers. The rules do not permit shoehorning various future expenses into previously transferred assets so as to give them the appearance of a fair exchange.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision with regard to the cash transfers but MODIFY the calculation of the share of the home. The transferred amount based on the correct equalized value is \$154,413.15 which results in a total penalty of \$212,618.22 or 639 days.

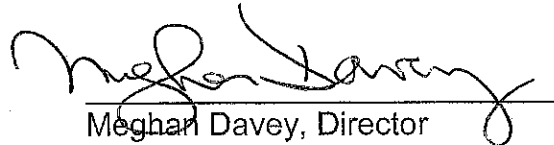
THEREFORE, it is on this <sup>20th</sup> day of JUNE 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED in part with regard to the imposition of the penalty for the cash transfer;

That the Initial Decision is MODIFIED in part with regard to the calculation of the value of the transferred real property; and

That Hunterdon County shall impose a penalty of 639 days from November 1, 2015.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services