



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

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

S.A.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 15903-16

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. Neither Party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 15, 2017, in accordance with an Order of Extension. The Initial Decision was received on March 16, 2017.

The matter arises from Petitioner's June 17, 2016 Medicaid application. At issue are numerous cash withdrawals totaling \$72,600 during the look back period. Petitioner's representative argued that the transfers were compensation for live-in caregiving services provided by Petitioner's sister, J.A., and that the sisters' funds were comingled to pay for necessary living expenses. These assertions were unsupported by verifications. On August 26, 2016, OCBSS advised Petitioner's representative of its intention to impose a transfer penalty. The Petitioner was provided until September 14, 2016 to rebut the presumption

that these transfers were made to qualify for Medicaid or request a waiver of the transfer penalty based upon undue hardship. Petitioner neither submitted verification of the cash withdrawals nor requested an undue hardship waiver. On September 26, 2016, the Ocean County Board of Social Services (OCBSS) assessed a 218 day transfer penalty, causing Petitioner to become eligible on January 5, 2017.

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. 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).

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 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.

In the alternative, Petitioner asserts the undue hardship exception should be granted.¹ N.J.A.C. 10:71-4.10q(1)(i) provides that undue hardship exists when a transfer penalty "would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered" and when "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."

Petitioner's representative did not request a waiver of the transfer penalty based upon undue hardship. Petitioner has not demonstrated that the transferred assets are beyond her control and cannot be recovered. Petitioner's POA was not present at the hearing and was not subpoenaed to appear at the hearing. In fact, no one appeared to testify on behalf of the Petitioner. Furthermore, no evidence was presented that Petitioner's health or life would be endangered if the undue hardship waiver is denied. Accordingly, the ALJ

¹ On October 13, 2016, Petitioner's representative requested a fair hearing with regard to OCBSS' September 29, 2016 transfer penalty. On October 18, 2016, Petitioner's appeal of the transfer penalty, and not a denial of an undue hardship waiver, was transmitted to the Office of Administrative Law.

concluded that the Petitioner did not meet the requirements for the undue Hardship exception. I agree.


Petitioner was unable to provide any corroborating evidence to establish that the transfers were done for a purpose other than to qualify for Medicaid benefits.

THEREFORE, it is on this 15th day of JUNE 2017,

ORDERED:

That the Initial Decision affirming the transfer penalty is hereby

ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services