



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

MEGHAN DAVEY
Director

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

B.H.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 12932-2018
AND HEALTH SERVICES AND	:	
CAMDEN COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

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 Decision is May 20, 2019 in accordance with an Order of Extension.

The matter arises regarding the determination that Petitioner was subject to a transfer penalty. Camden County found that Petitioner's husband had transferred \$226,322 during the five-year look-back period. Petitioner has been residing in an assisted living

facility since October 2016. Petitioner's husband lives in the same facility.¹ She filed an application on April 20, 2018. After permitting additional time for explanations about the withdrawals and denying the request for a hardship waiver, Camden County imposed a 553-day penalty. Petitioner is appealing the penalty only.

The Initial Decision upholds the transfer penalty as Petitioner did not rebut the presumption that the transfer was done for the purpose of qualifying for Medicaid. N.J.A.C. 10:71-4.10(j). A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "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.

¹ In addition to the funds subject to a transfer penalty, Petitioner's husband also transferred \$105,000 of the couple's assets to a Croatian Medicaid Annuity in March 2018. He receives monthly income of \$8,795.24 from that annuity. R-1 at 7 and 23.

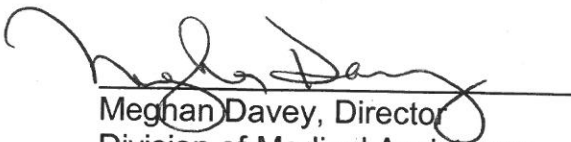
Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that the Petitioner was properly assessed a penalty. The Initial Decision found that Petitioner failed to provide sufficient evidence about the transfers. Petitioner's husband alleged the transfers were payments to individuals who were blackmailing him. He had stated he had been visiting prostitutes and one claimed to have had his child in 2014 for whom he paid \$600 a month in support. ID at 6. However, there was no pattern of \$600 a month payments. Around \$65,600 of the transferred funds were checks made out to two unidentified females while the remaining \$160,722 were checks made out to cash or cash withdrawals. While there was initial contact with the local police in July 2016, it was not until November 2017 that the family requested that the police document the allegations for the purpose of applying for Medicaid. They did not permit the police to investigate and asked that the police "hold off until [the family] hear[s] back from Medicare [sic]". Exhibit U. The case was closed in January of 2018. However, in August of 2018, the family again tried to reopen the case as Petitioner had been assessed a penalty for the transfers by Camden County.

The Initial Decision found that Petitioner had not met the burden to establish by convincing evidence that the funds had been transferred for a purpose other than applying for Medicaid. Neither she nor her husband testified and the failure to pursue a criminal investigation does not support a finding to support the purpose of the transfers.

THEREFORE, it is on this 16th day of MAY 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services