

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).

In April 2018, after a sudden decline in health beginning in February 2018, Petitioner listed his home for sale with realtor Greg Kincaid. Mr. Kincaid has no relationship to Petitioner, Petitioner's son, L.T., or the buyer of the property. Petitioner's home was listed for \$35,000 and ultimately sold for \$32,500.

On September 24, 2018, Petitioner was admitted to the Medford Care Center Nursing Facility. On that same day, Petitioner filed an application for Medicaid benefits with the Burlington County Board of Social Services (BBCSS). On January 4, 2019, BCBSS found the fair market value of the property to be \$111,499 and determined Petitioner had not received \$78,999 of the fair market value. As a result, BCBSS imposed a 229 day transfer penalty.

At the hearing, Petitioner's son, realtor and real estate appraiser, Donn Lamon, testified regarding the state of the home at the time of the sale. The property had no heat or air conditioning on the second floor, the insulation had been eaten by squirrels, wiring was exposed, there were holes in the floor, mold in the bathroom and some of the walls had no dry wall. Accordingly, the Initial Decision held that Petitioner had provided adequate proof that the reduced price of the home was based on its deplorable condition.

In this case, Petitioner's claim that the municipal tax assessment was too high and did not reflect the market value of the property is supported by competent evidence. N.J.A.C. 1:1-15.5(b), the residuum rule, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." Here, the photographs of the property, appraisal of the property and corroborating testimony provides sufficient evidence to overcome the tax assessment and establish that Petitioner's property was sold for fair market value. The price agreed to appears to be in line with the status of the house and the funds received were used to pay for Petitioner's care.

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 lookback period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

Based on my review of the record, I concur with the Initial Decision that Petitioner received fair market value for the home. While the tax assessed value is often the best indicator of that value, instances where this is not the case must be supported by other competent evidence of the value the property would command on the open market. I am satisfied that the record contains such evidence.

THEREFORE, it is on this ^{12th} day of JULY 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Carol Grant, Acting Director
Division of Medical Assistance
and Health Services