

The matter arises regarding the determination that Petitioner was subject to a transfer penalty. Cumberland County found that Petitioner has transferred \$214,597.27 during the five-year look-back period. Petitioner provided information that the life estate deed she signed in November 2017 \$134,597.27

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). In fact, Petitioner admitted that the life estate deed was done in an attempt to retroactively explain the transfers she had made to her son.

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.

The Initial Decision found that Petitioner failed to rebut the presumption that the transfers were made for the purpose of applying for Medicaid. The record does not show that Petitioner presented any witnesses at the hearing. To that end, I concur that Petitioner did not rebut the presumption about the transfers.

Cumberland County reduced the penalty from \$134,597.27 by the amount sought by M.H., Petitioner's other son, in a complaint filed against J.H. and his wife. It is unclear the basis for this reduction.¹ However, 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) and Med-Com 10-06. 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, supra, (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty "lacked any legal support"). Therefore, I reinstate the penalty amount to the full \$134,597.27.

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. However, I hereby MODIFY the Initial Decision to impose the full penalty of \$134,597.27 and a 317 day penalty period until March 14, 2019.

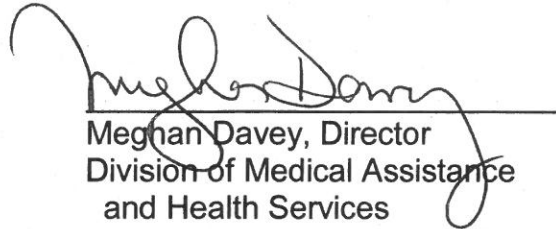
¹ There is no evidence in the record that M.H. has authority to act for Petitioner. The complaint states that J.H. and his wife held Petitioner's Power of Attorney and that J.H. had assigned the Power of Attorney to M.H. N.J.S.A. 46:2B-8.2(a) defines power of attorney as "written instrument by which an individual known as the principal authorizes another individual . . . known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal's agent". N.J.S.A. 46:2B-8.4 states that "[n]o person, other than the principal, shall revoke a durable power of attorney except upon a court order for good cause." There is no court order in the record.

THEREFORE, it is on this 28th day of FEBRUARY 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the imposition of the transfer penalty; and

That the Initial Decision is hereby MODIFIED to affirm the full penalty of 317 days.



Meghan Davey, Director
Division of Medical Assistance
and Health Services