

due to excess resources. The second application was filed in June 2018 and was approved as of August 1, 2018 but subject to a penalty. Petitioner appealed the second determination claiming that the transfers do not apply.

Medicaid law contains 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. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). In enacting the Deficit Reduction Act of 2005 (DRA) (109 P.L. 171), § 6012, Congress sought to close loopholes that allowed Medicaid eligibility for those who had sufficient assets to pay for their own medical care. See N.M. v. Div. of Med. Assist. & Health Servs., 405 N.J. Super. 353. 362-63 (App. Div.), certif. denied, 199 N.J. 517 (2009) (explaining the Congressional intent behind the enactment of the DRA). Congress mandated in the DRA that the transfer penalty period start later and that the look-back period be extended. Additionally the DRA specifically delayed the transfer penalty until the later of 1) the first day of the month in which assets have been transferred; 2) the first day of the month after which assets have been transferred or 3) the date the individual becomes eligible and would be receiving institutional level of services but for the penalty period. 42 U.S.C.A. 1396p(c)(1)(d)(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(i)2.

The Initial Decision found that Petitioner failed to show by a preponderance of the evidence that the transfers of \$72,082 were solely for a purpose other than establishing

Medicaid eligibility. ID at 7. See N.J.A.C. 10:71-4.10(j). However, the decision concluded that the transfer penalty “should be calculated from the initial application on March 26, 2018, and therefore the penalty period should run from March 1, 2018 through August 1, 2018.” ID at 7. This is incorrect. A transfer of \$72,082 results in a penalty of 210 days. R-3 at 23. As stated above, the transfer penalty runs from the date the applicant is otherwise eligible for Medicaid benefits. In March 2018, Petitioner’s resources exceeded \$45,000 as evidenced by the denial letter dated April 13, 2018.¹ R-6. Petitioner was eventually found eligible on August 1, 2018 after filing a second application. It is as of that date that the transfer penalty begins to run. 42 U.S.C.A. 1396p(c)(1)(d)(i).

Additionally, each individual has a baseline lookback period regardless of how many applications are filed. The federal government has directed states to calculate the lookback period based upon the first application for Medicaid. See State Medicaid Manual §3258.4(C). Petitioner’s first application in March 2018 sets the five year lookback for all subsequent applications. Thus, I FIND that the transfers from March 2013 forward were properly assessed.

In exceptions, Petitioner argues that the information provided to him by Virtua Health Rehabilitation Nursing Home was incorrect. No one from the facility testified but, regardless, incorrect information does not change the fact that the Medicaid rules were correctly applied in this case. Petitioner admits that \$17,500 should be considered a transfer but is seeking to change the lookback period to begin August 2013 to eliminate the transfers that occurred from March 2013 to July 2013.

Petitioner’s son claimed he took out two personal loans to pay for nursing home costs for November, December 2017 and January of 2018 to “get to the target date of August 1, 2018.” Exceptions at 1. There is no explanation of why the target date was

¹ It also appears that Petitioner would have needed to create and fund a Qualified Income Trust before being found eligible in March 2018.

August 1, 2018 other than to remove the transfers that occurred in July 2013 and prior. The loans are for \$25,000 in October 2015 and \$30,800 in December 2016 and exceed the amount paid in late 2017 and 2018 by \$25,000. P-1. The first loan was taken out more than two years prior to the November 2017 payment. There is no nexus between the loans and these payments. Nor was a logical explanation of the need to get to the August 1, 2018 date offered except to remove the March through July 2013 transfers.

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's findings of fact and recommended decision concluding that the Petitioner was properly assessed a penalty. However, I REVERSE the conclusion that the penalty should begin on March 1, 2018. I FIND that Camden County properly assessed the transfer penalty to run from August 1, 2018 through February 26, 2019.

THEREFORE, it is on this 27th day of FEBRUARY 2019,

ORDERED:

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

That the Initial Decision is hereby REVERSED with regard to the eligibility date.



Meghan Davey, Director
Division of Medical Assistance
and Health Services