



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

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Lt. Governor

CAROLE JOHNSON
Commissioner

CAROL GRANT
Acting Director

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

J.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

CAMDEN COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 00734-2019

As Acting 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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is July 8, 2019 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on

May 24, 2019.

The matter arises regarding the determination that Petitioner was subject to a transfer penalty. Camden County found that Petitioner had transferred \$33,550 during the five-year look-back period. Petitioner has been residing in an assisted living facility since 2012. He was found otherwise eligible for Medicaid as of July 2017 but subject to a seventy-nine day penalty. Petitioner died in August 2018 and his son pursued the fair hearing as the executor of his estate.

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

demonstrated by Petitioner that might give rise to the transfers being exclusively for a purpose other than quality for Medicaid.

THEREFORE, it is on this 2^{1st} day of JULY 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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