

imposition of a 904 day transfer penalty in connection with Petitioner's transfer of her home to her daughter, L.G., during the lookback period. MCBSS determined that Petitioner's home, which was worth \$311,043.57, was transferred for less than fair market value. Under the regulations, "[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period" a transfer penalty of ineligibility is assessed.¹ N.J.A.C. 10:71-4.10 (c). Petitioner disputes the transfer penalty and asserts that she is entitled to a caregiver exemption pursuant N.J.A.C. 10:71-4.10(d).

The New Jersey regulations regarding this transfer exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." Id. It is Petitioner's burden to prove that he is entitled to the exemption.

Petitioner is eighty-nine years old and has had several health issues beginning in or about 2013. Petitioner lives with her daughter, L.G. It is undisputed that L.G. has lived with her mother for the two years prior to applying for Medicaid Managed Long Term Services and Supports (MLTSS).² Petitioner claims that L.G. has been her primary caretaker and has provided the type of care necessary to prevent her institutionalization in the two years prior to applying for Medicaid. Petitioner's daughters, L.G. and G.T., testified in support of Petitioner's claim that she qualified for a caregiver exemption. The Petitioner also provided an additional certification from her daughter, L.G. and a certification from her

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).

² Petitioner applied for MLTSS on September 28, 2018. On December 13, 2018, MCBSS found Petitioner eligible effective September 1, 2018 but subject to a 904 day transfer penalty.

with MCBSS' findings that Petitioner was independent in her ADLs.

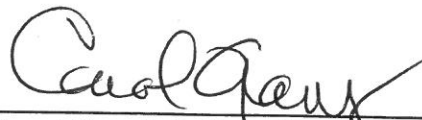
Moreover, the record neither supports a finding that Petitioner needed personal care that exceeded normal personal support activities, nor that L.G. provided such supports. Despite the fact that the medical records state that Petitioner fell early in the day but was not found until that night because she was home alone while L.G. was at work, neither the Initial Decision nor L.G.'s certification address how L.G. is able to provide full time care to Petitioner in order to keep her out of a nursing facility while she was employed.⁴ While employment itself may not prohibit someone from benefiting from the caregiver exemption, L.G. must still demonstrate that she was her mother's primary caregiver and the care s

he provided exceeded normal personal support activities. There is simply nothing in the record to support a finding that the transfers of Petitioner's home to L.G. was exempt from penalty pursuant to 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d).

THEREFORE, it is on this ^{19th} day of JULY 2019,

ORDERED:

That the Initial Decision is hereby REVERSED and MCBSS' imposition of a transfer penalty is upheld.



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

⁴ Medical records from Raritan Bay Medical Center state that Petitioner fell at home around noon and was brought in to the hospital at 7:15 p.m. after L.G. returned home from work. (R-1 and R-22).