



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). 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). 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 August 2017, Petitioner became institutionalized. Her husband remained in the community until October 2017 when a residential living unit in the same facility became available. On September 2019, Petitioner and her husband transferred \$40,000 to their disabled daughter-in-law. Thereafter, on October 5, 2018, Petitioner filed an application for Medicaid with the Burlington County Board of Social Services (BCBSS). Petitioner asserts that the \$40,000 transfer was for the sole benefit of her disabled daughter-in-law, and that Petitioner's home should not have been excluded from the couple's countable resources when BCBSS determined eligibility because her husband no longer resided in the house.

Petitioner claims that since the \$40,000 was given to her disabled daughter-in-law, the transfer does not result in a penalty pursuant to N.J.A.C. 10:71-4.10(e)1. The regulation states that a transfer penalty shall not apply when “the assets were transferred to a trust established for the sole benefit of an individual under 65 years of age who is disabled as defined by the Social Security Administration.” *Id.* In support of this, Petitioner presented an undated, written agreement memorializing the terms of the previously made transfer.<sup>1</sup> The regulation goes on to state that a determination that an asset was transferred for the sole benefit of the individual requires a written instrument of transfer...which legally binds the parties to a specific course of action, clearly sets out the

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<sup>1</sup> This matter was heard by ALJ Buono on July 10, 2019. Petitioner submitted the unwritten agreement to the OAL and opposing counsel on July 24, 2019.

conditions under which the transfer was made, states who can benefit from the transfer and names the State of New Jersey as the first remaining beneficiary. N.J.A.C. 10:71-4.10(f). Petitioner has failed to present any contemporaneous documentation that would exempt the \$40,000 transfer from penalty.

Furthermore, I agree with the ALJ that Petitioner's post hearing attempt to submit as evidence an undated, written agreement is suspect and fails to meet the regulatory requirements. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 575 (1988). The document purports to confirm an arrangement that, with the benefit of having learned the requirements at the hearing, suddenly meets the conditions of N.J.A.C. 10:71-4.10(f). This attempt to subsequently produce a written document calls into question the credibility of Petitioner's entire case, including the following contentions regarding her husband's living arrangements while she was institutionalized and its effect on the date of eligibility.

Petitioner argues that the value of her marital home should have been included in BCBSS' resource calculations.<sup>2</sup> BCBSS argues that the resource should have been excluded pursuant to N.J.A.C. 10:71-4.4 because at the moment of institutionalization, Petitioner's husband still lived in the marital home. When determining the resources of a couple, where one resides in the community, the community spouse's share is based on the couple's countable resources on the first day of the month of the current period of institutionalization..." N.J.A.C. 10:71-4.8(a)1. All resources are included unless subject to exclusion under N.J.A.C. 10:71-4.4. A home is excluded if it is an individual's principal residence.

Petitioner became institutionalized in August 2017. She claims that her husband did not reside in the house but rather with their son, while he waited for a residential unit to open up in a retirement community. As evidence, she points to the fact that in October

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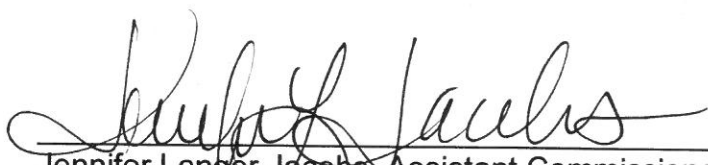
<sup>2</sup> In 2018, the community spouse's share of the couple's resources shall be the greater of \$24,720 or one half of the couple's combined countable resources, not to exceed \$123,600. N.J.A.C. 10:71-4.8(a)1i-ii. If Petitioner's house were included in the calculations, it could change the amount of countable resources and required spend down which in turn could affect the effective date of eligibility.

2017, two months after her institutionalization, a unit became available; her husband sold the house and moved to a retirement community. In support of this, she provided real estate closing documents and a letter, dated almost two years after her institutionalization, from the retirement community administrator stating his understanding of Petitioner's husband's living situation. However, she provided no documentary evidence to show that her husband had moved out of the house when she was institutionalized. Furthermore, neither her husband nor son testified with regard to their living arrangements. The information available to BCBSS demonstrated that at the time Petitioner was institutionalized, her husband continued to reside in their marital home. Accordingly, the home was excluded from the BCBSS' resource calculations, and the effective date of eligibility remains December 1, 2018 with a penalty period of 116 days to begin on that date and end March 26, 2019.

THEREFORE, it is on this 31<sup>st</sup> day of OCTOBER 2019,

ORDERED:

That the Initial Decision is ADOPTED.

  
Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services