

At issue is a two month and seven day penalty imposed due to Petitioner's transfers totaling \$23,232.40.¹ In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. 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. N.J.A.C. 10:71-4.10 (c). 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).

At issue are five transfers for a total of \$26,099.95. The checks were all written to Petitioner's son F.S. and mostly in round amounts: Check #1343 for \$6,000; Check #1283 for \$3,000; Check #1418 for \$5,000; Check #2,099.95 and Check #1841 for \$10,000. During the hearing, Petitioner submitted documentation to support \$2,867.55 in transfers. I FIND that BCBSS correctly reduced the transfer penalty based on these proofs.

The Petitioner asserted that Check #1841 for \$10,000 was to cover F.S.'s direct and out-of-pocket expenses for services for Petitioner. In accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free in the past are presumed to have been intended to be delivered without compensation. If payment is to be made there must be a preexisting written agreement to pay for such services at a fair market rate.

¹ The penalty amount was revised on April 1, 2019.

No such document existed here. I FIND that this check was correctly included in the assessed transfer penalty.

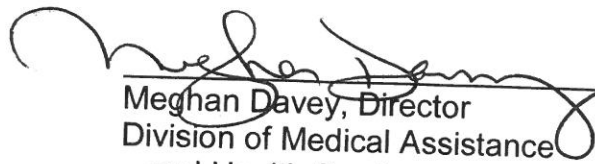
F.S. asserted that the balance of the checks were payments for his wife's medical expenses which Petitioner had agreed to pay. The ALJ gave Petitioner credit for \$8,739.79 for F.S.'s wife's medical expenses. However, the checks at issue were all written to F.S., and not to any medical provider. They are written in round amounts, and the checks do not state the purpose of the payment. F.S. did not produce any bills, invoices or receipts for his wife's medical care, nor did he provide any of his own checks written out to his wife's medical providers. There is no evidence, or even indication, that F.S. and his wife did not have medical insurance, nor is there any evidence that they attempted to apply for programs that would aid them in the payment of their medical expenses. I FIND that Petitioner failed to provide evidence that she intended to pay for, or did in fact pay for, her daughter-in-law's medical expenses. Petitioner has not shown that she made these transfers for a purpose other than to qualify for Medicaid benefits. I FIND that these amounts were properly included in the transfer penalty.

THEREFORE, it is on this ^{7th} day of JUNE 2019,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the credit given to Petitioner for her daughter-in-law's medical expenses and is ADOPTED with regard to the remainder of her findings; and

That BCBSS \$23,232.40 transfer penalty is upheld.


Meghan Davey, Director
Division of Medical Assistance
and Health Services