



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Director

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

V.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

& HEALTH SERVICES &

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 02776-19

As 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. No Exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is September 3, 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 in this matter was received on July 18, 2019.

Based on my review of the record I FIND that the well-reasoned analysis of the facts and law by the ALJ should be adopted. Medicaid law contains a presumption that any transfer for less than fair market value during the lookback 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). 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 best evidence to rebut the presumption that caregiving services provided by relatives was done to establish Medicaid eligibility would be a written agreement between the parties pre-existing the delivery of the care or services. However, even where a pre-existing care agreement exists, “the mere existence of a pre-existing care agreement for services does not automatically establish that the services were rendered for fair market value.” See E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 352-53 (App. Div. 2010).” E.A. v. DMAHS and Hunterdon County Board of Social Services, supra. The court went on to find that “[n]otwithstanding a care agreement, the applicant still bears the burden to establish the types of care or services provided, the type and terms of compensation, the fair market value of the compensation, and that the amount of compensation or the fair market value of the transferred asset is not greater than the prevailing rates for similar care or services in the community. N.J.A.C. 10:71-4.10(b)(6)(ii) and (j).” Id.

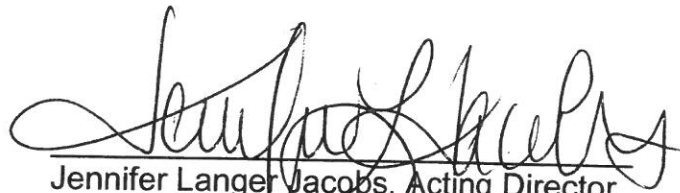
Petitioner disputes that portion of the transfer penalty that concerns her payment of L.S.’s mortgage. Petitioner and L.S. did not enter into a written care agreement prior to

delivering care giving services. Petitioner presented no evidence concerning the daily services provided by L.S., the amount of time L.S. spent providing care giving services, the fair market value of those services or the fair market value of her room and board. As a result, I FIND that Petitioner has failed to establish that these transfers were for fair market value.

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

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Acting Director
Division of Medical Assistance
and Health Services



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 02776-19

AGENCY DKT. NO. N/A

V.S.,

Petitioner,

v.

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES, AND
MONMOUTH COUNTY DIVISION OF
SOCIAL SERVICES,**

Respondents.

Cassandra Stabbert, Esq., for petitioner (South Jersey Legal Services, Inc.,
attorneys)

Susan Pansky, Fair Hearing Liaison, appearing for respondent pursuant to
N.J.A.C. 1:1-5.4(a)(3)

**No appearance on behalf of respondent Division of Medical Assistance and
Health Services**

Record Closed: June 28, 2019

Decided: July 18, 2019

BEFORE MARY ANN BOGAN, ALJ: