



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

SHEILA Y. OLIVER  
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CAROLE JOHNSON  
Commissioner

JENNIFER LANGER JACOBS  
Assistant Commissioner

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

A.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MORRIS COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 15011-2019

As Assistant Commissioner for 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is January 31, 2020 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 December 17, 2019.

The matter arises regarding the determination that Petitioner was subject to a transfer penalty. Morris County found that Petitioner had transferred \$21,400 during the

five-year look-back period. Petitioner was found otherwise eligible for Medicaid as of March 1, 2019 but subject to a 62 day penalty that ended May 1, 2019.<sup>1</sup>

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 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.

Here Petitioner, who is married, stated that the transfers were to pay his son for care while his wife was out of the country from March 2013 to March 2014 as well as repayment to a cousin in 2018 for funds borrowed in 2016. Petitioner did not provide evidence that he

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<sup>1</sup> This is Petitioner's third application for Medicaid. The first two applications, filed in October 2017 and April 2018 respectively, were denied for failure to provide information. Neither of these earlier denials was appealed. ID at 2.

had a care agreement to employ the son or any loan document from the cousin.

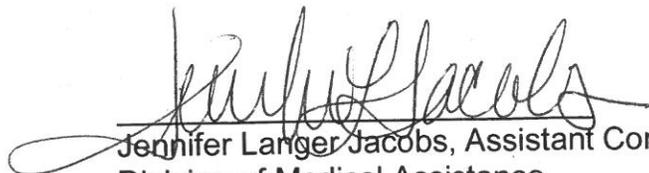
Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that the Petitioner was properly assessed a penalty. The Initial Decision correctly determined that Petitioner's October 2017 application sets the five year look back period to be October 2013 for all subsequent applications. ID at 7.

The transfers at issue are subject to rebuttal of the presumption that they were done to qualify for Medicaid. There must be convincing evidence that the transfers were exclusively done for some other purpose. N.J.A.C. 10:71-4.10(j). Here Petitioner claimed that withdrawals either done by or payable to his son were done to provide care and the cash withdrawal in 2018 was to repay a cousin for funds lent in 2016. As the Initial Decision noted, the evidence produced to support these claims was not convincing. ID at 4-5. There is no pre-existing care agreement to support the claim that the son provided services. N.J.A.C. 10:71-4.10(b)6ii. Additionally, the alleged 2016 loan is likewise unsupported by competent evidence. The documents that were provided are undated and fail to explain the cost of the repairs in light of the insurance claim. ID at 9. Thus, I agree that the transfer penalty was properly imposed.

THEREFORE, it is on this <sup>27th</sup> day of JANUARY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.

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