

State of New Ilersev

DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES PO Box 712 Trenton, NJ 08625-0712

CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS Assistant Commissioner

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

J.K,

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

PETITIONER,	ADMINISTRATIVE ACTION
V.	FINAL AGENCY DECISION
MORRIS COUNTY BOARD OF	OAL DKT. NO. HMA 12636-19
SOCIAL SERVICES,	
RESPONDENTS.	

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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 March 2, 2020 in accordance with <u>N.J.S.A.</u> 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 January 17, 2020.

The matter arises from the Morris County Board of Social Services (MCBSS) determination that Petitioner was subject to a transfer penalty. MCBSS found that Petitioner had transferred \$2,050 during the five-year look-back period. Petitioner was found otherwise eligible for Medicaid as of October 1, 2018 but subject to a 5 day penalty.

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>U.S.C.A.</u> 1396p(c)(1); <u>N.J.A.C.</u> 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." <u>E.S. v. Div. of Med. Assist. & Health Servs.</u>, 412 <u>N.J. Super.</u> 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." <u>Ibid.</u> 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." <u>Ibid.</u>

Petitioner seeks to set aside the transfer penalty based on a payment, in the amount of \$2,050, made directly to the nursing facility where Petitioner resided. The reduction of the penalty is in violation of 42 <u>U.S.C.</u> § 1396p(c)(2)(C) which was clarified in a Medicaid Communication. Any reduction of the transferred funds is predicated on whether "a satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) <u>all assets transferred for less than fair market value have been returned to the *individual*." 42 <u>U.S.C.</u> §1396p(c)(2)(C) (emphasis added). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. Medicaid Communications (Med-Comms) 10-02 and 10-06.</u>

Petitioner has been a resident at Morris View Healthcare Center (Morris View) since January 2018. On October 31, 2018, Jay Werzberger of Morris View filed Petitioner's

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second Medicaid application with the MCBSS.<sup>1</sup> On November 14, 2018 and December 6, 2018, MCBSS requested verifications, including information regarding a June 2015 transfer in the amount of \$2,050. On or about December 5, 2018, a check in the amount of \$2,050 was written to Morris View and applied to Petitioner's account.

Although there is no promissory note or loan document, the ALJ finds as fact that the \$2,050 was a loan from Petitioner to his grandson. Petitioner argued, and the ALJ agreed, that the full amount of the \$2,050 loan was returned to Petitioner by way of the December 5, 2018 check to Morris View, and therefore, MCBSS should not impose a transfer penalty. There are several problems with this conclusion. First, the record shows that Petitioner wrote a check to a D.K, presumably the loan to his grandson, for \$2,050.<sup>2</sup> Yet, the check written to Morris View, purportedly to repay the loan to D.K., was executed by R.K., presumably not Petitioner's grandson. It is clear that Petitioner did not receive the \$2,050 back from his grandson. Not only was the check seemingly written by another family member, R.K.'s payment to Morris View is not a return to the *individual* as required by the statute and regulation. 42 <u>U.S.C.</u> §1396p(c)(2)(C)

It is clear from the record that the \$2,050 was not returned to Petitioner and the penalty period stands. Based on my review of the record and for the reasons set forth above, I hereby REVERSE the Initial Decision and uphold the transfer penalty.

THEREFORE, it is on this  $1^{\text{st}}$  day of March, 2020, ORDERED:

That the Initial Decision is hereby REVERSED.

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

<sup>&</sup>lt;sup>1</sup> Petitioner's first application, filed in August 2018, was denied for failure to verify information.

 $<sup>^{2}</sup>$  Nothing the record indicates that D.K. was a minor at either the time of the transfer or the payment to Morris View. If D.K. was a minor, the transfer would more appropriately be characterized as a gift than a loan.