

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.

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.S.C. § 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) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. §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.

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

second Medicaid application with the MCBSS.¹ 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.

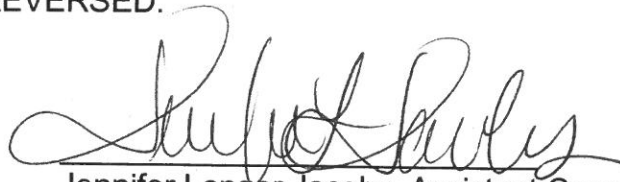
Although there is no promissory note or loan document, the ALJ finds as fact that the \$2,050 was a loan from Petitioner to his grandson. Petitioner argued, and the ALJ agreed, that the full amount of the \$2,050 loan was returned to Petitioner by way of the December 5, 2018 check to Morris View, and 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 \$2,050.² 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.S.C. §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 1st day of March, 2020,

ORDERED:

That the Initial Decision is hereby REVERSED.



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

¹ Petitioner's first application, filed in August 2018, was denied for failure to verify information.

² 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.