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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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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

L.C.,

PETITIONER,

ADMINISTRATIVE ACTION

V.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE:

OAL DKT. NO. HMA 9073-2018

AND HEALTH SERVICES AND

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

As Assistant Commissioner 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 20, 2020 in accordance with an Order of Extension.

An application was filed on Petitioner's behalf in January 2018. In June 2018, Petitioner's application was granted with eligibility as of December 1, 2017. However, a

penalty of 1,029 days was assessed. Petitioner appealed the transfer penalty claiming that the resources had been returned.

At the beginning of the look back period, Petitioner and his wife had assets of approximately \$698,000. J-29. In October 2017 Petitioner entered the nursing home and the snapshot was set based on the couple's then assets of over \$300,000. Petitioner's wife was entitled to retain \$120,900.00. Medicaid Communication No. 17-01. Monmouth County identified transfers occurring in 2014, 2015 and 2016. The largest transfer was on May 15, 2015 when Petitioner's wife transferred \$386,000 to her daughter and son-in-law. That day she also transferred \$6,977.67 to her daughter. There was another transfer of \$9,000 on May 7, 2015 for a total of \$401,997.67 that month. J-20. Petitioner claims these funds were transferred to her daughter to purchase a house with a contract price of \$396,000 that closed on May 18, 2015. R-11. The house was titled in the daughter and son-in-law's name.

On December 1, 2015 Petitioner transferred another \$25,000 to her daughter and yet another \$3,000 on December 31, 2015. The final transfer was or \$5,000 on January 6, 2016. J-20.

Petitioner contends that the funds transferred in May 2015 were used to purchase the house. The \$25,000 was transferred in December 2015 for "costs associated with the house" and the \$5,000 in January 2016 "to cover costs associated with 'fixing up' the house." ID at 6. No closing sheet was provided for the May 2015 purchase nor was there any evidence what the \$30,000 was used for to fix up the house some seven months after it was purchased.

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.¹ 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). The regulations also caution that "care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation." N.J.A.C. 10:71-4.10.

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). See also N.J.A.C. 10:71-4.10(e)(6)(iii). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. See C.W. v. DMAHS and Union County Division of Social Services, A-2352-13T2, decided August 31, 2015 (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty "lacked any legal support").

The ALJ heard testimony of Petitioner's wife and daughter and found that they "did not adequately explain the transactions at issue." Petitioner had been diagnosed with Alzheimer's disease a decade ago. At the time of the transfers, Petitioner was attending a day care and had aides caring for him. ID at 11. The real estate was not transferred to

¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

Petitioner's wife until the day before he entered the nursing home. It had been in the daughter and son-in-law's names for over two years. It appears that conversations with an attorney about applying for Medicaid were the impetus for the transfer. ID at 7.

I also find that the additional cash transactions of \$30,000 in late 2015 and early 2016 are neither documented by evidence of receipts of the costs expended to fix up the house. Nor was any evidence shown why \$401,997.67 was transferred in May of 2015 to effectuate the \$396,000 contracted sale of a house. That additional \$4,997.67 of transferred funds was not explained.

Moreover, the ALJ noted that the amount returned to Petitioner in the form of real property was less than the total amount transferred. ID at 17, Fn. 5. In doing so the decision cites Section 3258.10 of the State Medicaid Manual that interprets 42 U.S.C. 1396p(c)(2)(C), the federal analog to N.J.A.C. 10:71-4.10(e)(6)(iii), and explains that, to avoid a transfer penalty, "all of the assets in question or their fair market equivalent must be returned." Additionally when transferred asset was sold, for example, then "the full market value of the asset must be returned to the transferor, either in cash or another form acceptable to the State." Here the transfers to Petitioner's daughter were all in cash. Only \$10,000 in cash was returned. Regardless of the current value of the home, Petitioner transferred over \$30,000 in cash to the daughter months after the property was purchased in May 2015. Receiving the stepped up value of the home is not the same as having \$30,000 in cash returned. Thus, I FIND that the Petitioner has not demonstrated that the all of the transferred assets were returned and the penalty remains imposed.

THEREFORE, it is on this 9 day of FEBRUARY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Jennifer Langer Jacobs, Assistant Commissioner

Division of Medical Assistance

and Health Services