

by \$30,000 to \$106,936.41 or 310 days. Based upon my review of the record, I hereby adopt the findings and conclusions of the Administrative Law Judge in their entirety and I incorporate the same herein by reference.

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). “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. 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).

Petitioner held two joint bank accounts with her son, M.P, one ending in #2280 and #1890. During the five year look-back period, MCOTA determined that \$38,250 was transferred without fair market consideration from the #2280 account and the remaining

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).

\$68,686.41 was transferred from the #1890 account. The transactions recorded were transfers to M.P., her grandchild's private school and repayment of an unidentified loan. Petitioner does not dispute the finding that she did not receive fair market value for the transfers made from those accounts. Rather, Petitioner's son, M.P. argues that he made over \$256,000 in deposits from 2001 through 2008. Therefore, even if the \$106,000 transferred out of the accounts were for less than fair market value, the monies are appropriately owed and owned by him and should not penalize the Petitioner.

The Appellate Court has stated that "joint accounts are sometimes used as 'convenience accounts,' so that another party may more easily handle the financial affairs of the true owner of the asset." Bronson v. Bronson, 218 N.J.Super. 389, 394 (App.Div.1987). Indeed, under the Multiple-Party Deposit Account Act (MPDA), while the parties are alive:

Unless a contrary intent is manifested by the terms of the contract, or the deposit agreement, or there is other clear and convincing evidence of a different intent at the time the account is created:

a. A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit. In the absence of proof of net contributions, the account belongs in equal shares to all parties having present right of withdrawal. This subsection shall not be construed to affect the right of the court to effectuate an equitable distribution of property between the parties in an action for divorce pursuant to N.J.S. 2A:34-23.

N.J.S.A. 17:16I-4.

As the law above shows and absent any evidence from the financial institutions, Petitioner would have had unrestricted access to the funds and the account is considered her asset. See also POMS SI 01140.205 "When a claimant or recipient co-owns an account with someone who is not eligible for SSI benefits, we assume that all the funds in the account belong to the SSI claimant or recipient." Petitioner has failed to show any competent documentation regarding the origin of those funds. There are other ways to demonstrate ownership. For example, Internal Revenue Service Publication 17 instructs that:

If the funds in a joint account belong to one person, list that person's name first on the account and give that person's SSN to the payer. (For information on who owns the funds in a joint account, see Joint accounts, later.) If the joint account contains combined funds, give the SSN of the person whose name is listed first on the account. This is because only one name and SSN can be shown on Form 1099.

These rules apply both to joint ownership by a married couple and to joint ownership by other individuals. **For example, if you open a joint savings account with your child using funds belonging to the child, list the child's name first on the account and give the child's SSN.**" (emphasis added).


http://www.irs.gov/publications/p17/ch07.html#en_US_2013_publink1000171410

The burden of proof is on the individual to support her claim of eligibility for Medicaid. Petitioner provided no evidence that the monies in the joint bank account held with M.P. were not available to her. The accounts in question list Petitioner's name first. Moreover, there is no evidence in the record of deposits between 2008 and 2013, nor is there complete evidence in the record of deposits and withdrawals such that the court could determine to whom the resources belonged. N.J.A.C. 10:71-4.10(o)(3). Consequently, I agree with the Administrative Law Judge that the Petitioner has failed to meet her burden of proof that the resources were transferred for some reason other than to qualify for Medicaid.

THEREFORE, it is on this  day of MAY 2020,

ORDERED:

That the Initial Decision affirming the transfer penalty is hereby ADOPTED.


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