

to her daughter during the look-back period. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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). 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).

On November 9, 2017, Petitioner filed a Medicaid application with the Middlesex County Board of Social Services (MCBSS) seeking a January 1, 2018 eligibility date. On March 5, 2018, MCBSS issued a determination letter finding Petitioner eligible effective January 1, 2018. It was later discovered that Petitioner did not disclose her ownership interest in residential property which was sold within the sixty-month period prior to application, or transfer of the profits from that sale to her daughter, D.R. As a result, on March 13, 2018, MCBSS imposed a transfer penalty of 239 days for the transfer of \$82,218.49 for less than fair market value, resulting in an August 28, 2018 effective date of eligibility.

Petitioner does not dispute that the home she co-owned with her daughter was sold and that her daughter retained all the profits from the sale of that home. Instead, Petitioner argues that because the issuance of the transfer penalty on March 13, 2018 came eight days after the March 5, 2018 notice of eligibility, rather than being executed contemporaneously, MCBSS has no authority to issue the transfer penalty. Consequently, Petitioner argues that the January 1, 2018 eligibility date should remain in effect.

In addition to the reasons stated in the Initial Decision, there is no legal basis to grant eligibility when none exists. "Medicaid is an intensely regulated program." H.K. v. Div. of Med. Assistance & Health Servs., 184 N.J. 367, 380 (2005). DMAHS is obligated to administer New Jersey's Medicaid program in a fiscally responsible manner to ensure that the limited funds available are maximized for all program participants, Dougherty v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 91 N.J. 1, 4-5 (1982); Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217-19 (App. Div. 2004), certif. denied, 182 N.J. 425 (2005).

Petitioner's argument for the imposition of equitable considerations fails to recognize that the courts in New Jersey have rarely applied the doctrine of estoppel to governmental entities absent a finding of malice, Cipriano v. Department of Civil Serv., 151 N.J. Super. 86, 91(App.Div.1977), particularly when estoppel would "interfere with essential governmental functions." See also O'Malley v. Dep't of Energy, 109 N.J. 309, 316-18(1987) and Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). Where public benefits are concerned, courts have gone farther to recognize that "[e]ven detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations." Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979). See also Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990) and Johnson v. Guhl, 357 F. 3d 403 (3rd Cir. 2004).

The United States Supreme Court has addressed the estoppel issue in the context of federal disability benefits. Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990). In that case the Court, in the majority opinion, held that, under the Appropriations Clause of the Constitution, the payments of benefits from the federal treasury are limited to those authorized by statute. Erroneous advice from a governmental employee regarding those benefits cannot estop the government from denying benefits not permitted by law. Article VIII, Section II of the New Jersey Constitution

also has similar appropriations language. As the Medicaid Program is a cooperative federal-state program, jointly financed with federal and state funds, payment of Medicaid benefits from the state and federal treasuries must be authorized by law. The Supreme Court went on to note that:

[estoppel] ignores reality to expect that the Government will be able to "secure perfect performance from its hundreds of thousands of employees scattered throughout the continent." Hansen v. Harris, 619 F.2d 942, 954 (CA2 1980) (Friendly, J., dissenting), rev'd sub nom. Schweiker v. Hansen, 450 U.S. 785, 101 S.Ct. 1468, 67 L.Ed.2d 685 (1981). To open the door to estoppel claims would only invite endless litigation over both real and imagined claims of misinformation by disgruntled citizens, imposing an unpredictable drain on the public fisc. Even if most claims were rejected in the end, the burden of defending such estoppel claims would itself be substantial.

....
The natural consequence of a rule that made the Government liable for the statements of its agents would be a decision to cut back and impose strict controls upon Government provision of information in order to limit liability. Not only would valuable informational programs be lost to the public, but the greatest impact of this loss would fall on those of limited means, who can least afford the alternative of private advice.

OPM v. Richmond, 496 U.S. 414, 433- 434, 110 S. Ct. 2465, 2476 (1990).

The final statement in Richmond makes it clear that "[a]s for monetary claims, it is enough to say that this Court has never upheld an assertion of estoppel against the Government by a claimant seeking public funds. In this context there can be no estoppel, for courts cannot estop the Constitution." Id. at 434. This precedent was affirmed by the Third Circuit Court of Appeals, which also declined to apply estoppel against New Jersey in the context of determining Medicaid eligibility. Johnson v. Guhl, 357 F. 3d 403, 409-10 (3rd Cir. 2004). That court reached back even further to an 1868 Supreme Court case which held that "the Government could not be compelled to honor bills of exchange issued by a government official where there was no statutory authority for the issuance of the bills." Id.

Petitioner had an obligation to disclose the transfer of assets on her application. N.J.A.C. 10:71-2.2(e). Her failure to candidly provide this information caused the delay in discovering the transfer and consequently, issuing the transfer penalty. As previously stated, DMAHS has an obligation to ensure that the Medicaid program is operated in a

fiscally responsible manner. It is counterintuitive to accept that an applicant could knowingly, or unknowingly, provide incorrect information on an application, and Medicaid would be prevented from rectifying that situation.

THEREFORE, it is on this  day of JANUARY 2020,

ORDERED:

That the Initial is hereby ADOPTED.



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