

The matter arises regarding the 2016 determination that Petitioner was subject to a transfer penalty. Hunterdon County found that Petitioner had transferred \$281,047.66 during the five-year look-back period. However, Petitioner's application was denied because Petitioner had excess resources and needed a QIT in order to start the penalty. At some point, Petitioner became eligible as of February 2016 and the penalty was imposed.

The Initial Decision upholds the transfer penalty as Petitioner did not rebut the presumption that the transfer was done for the purpose of qualifying for Medicaid. I concur with the conclusion that the penalty as originally assessed by Hunterdon County erroneously contained the transfer of the marital home which had actually occurred prior to the look back period. Moreover, Petitioner's life estate in the property was satisfied when the property was sold in 2016.

The removal of the marital property caused the reduction to a calculated penalty of 348 days. N.J.A.C. 10:71-4.10(j). 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.

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). The burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide

that "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted." N.J.A.C. 10:71-4.10(i)2.

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that the Petitioner was properly assessed a penalty of 348 days. If not already done, Hunterdon County shall make changes to reflect this penalty period.

THEREFORE, it is on this ^{16th} day of FEBRUARY 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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

DECISION COVER SHEET

This decision

Has

Has not

**been e-mailed to the parties. Please
process accordingly.**