

1, 2020. However, a penalty of 394 days was assessed resulting from the sale of Petitioner's property for \$141,159.65 less than fair market value during the look-back period.

The Initial Decision determined that Petitioner had shown that a hardship exemption should have been granted and reversed the transfer penalty related to the sale of the property. Based upon my review of the record, I hereby MODIFY the findings and conclusions of the Administrative Law Judge (ALJ).

In determining Medicaid eligibility for someone seeking institutionalized benefits, 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. 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.

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.

The fair market value of a property is "an estimate of the value of an asset, based on

generally available market information, if sold at the prevailing price at the time it was actually transferred.” N.J.A.C. 10:71-4.10(b)6. Absent a certified appraisal, the value of a resource is considered “the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value).” N.J.A.C. 10:71-4.1(d). The equity value of real property is “the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any. . . .” N.J.A.C. 10:71-4.1(d)1iv.

Here, MCBSS determined that the fair market value of the property was \$276,159.65, which reflected the equity value of the property at the time of its sale in June 2019, pursuant to N.J.A.C. 10:71-4.1(d)1iv.¹ R-5. Because the property sold for \$135,000, MCBSS assessed a transfer of assets in the amount of \$141,159.65. R-5 and J-1. However, the record in this matter supports a finding that the property was in deplorable condition at the time it was sold. Prior to the time of the sale, Petitioner resided with her mother, who was Petitioner’s sole caregiver. ID at 3. Petitioner suffers from post-traumatic stress disorder (PTSD) as a result of the murder of her daughter and assault of her son as well as multiple physical and cognitive impairments resulting from a home invasion, where both Petitioner and her mother were assaulted. Id. at 3-4. Petitioner’s mother passed away in November 2017, and Petitioner was unable to care for herself or the maintenance for the property. Id. at 4. Petitioner was admitted into a long-term care facility in December 2017. Ibid. The property was abandoned and fell into great disrepair. Ibid. Petitioner’s then power of attorney

¹ The tax assessed value of the property when it was sold in June 2019 was \$230,400. That amount divided by .8343, which is the Middlesex County assessment ratio for Monroe, New Jersey in the State Table of Equalized Valuations, results in an equity value of \$276,159.65. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Middlesex County, 2018, <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.

(POA)² sold the property in June 2019 to XTREME HD INC. (XTREME), which buys, rehabilitates, and sells real estate, for \$135,000. Ibid. The property was purchased without a mortgage and as such, no appraisal was done prior to the sale of the property. Id. at 5. Arsen Lusher, authorized officer, director, and shareholder of XTREME, certified that he had no past or present relationship with either Petitioner or Petitioner's then POA and that the property "was in deplorable condition and not fit for habitation at the time of purchase."³ J-10. Mr. Lusher additionally certified that he performed approximately \$80,000 in repairs to the property prior to the property being resold, but he believed that the use of general contractors would have raised those costs to at least \$150,000. ID at 5 and J-10.

Based upon the record presented, including the description of the property after being abandoned for approximately two years, I FIND that at the time of its sale, the price that the property could reasonably be expected to sell for on an open market was not \$276,159.65, as determined by MCBSS, but was closer to the actual sale price of \$135,000. Moreover, the record supports a finding that the property was sold by Petitioner's POA in an arm's length transaction to a third party that had no familial or other relation to Petitioner or her POA. Accordingly, I FIND that the Petitioner has rebutted the presumption that the property was sold at less than fair market value in order to establish Medicaid eligibility. However, because Petitioner has successfully rebutted this presumption and showed that the sale price of the property represented the fair market value at the time of the sale,

² Petitioner granted a POA to R.S. on November 14, 2017; however, at R.S.'s request, the POA was revoked on December 11, 2019 due to his declining health. ID at 4.

³ Mr. Lusher specifically noted that the property suffered from an infestation of rats and more than 100 cats with resultant animal feces throughout the home; the home was badly tilted to one end requiring the installation of a steel support beam to correct; the attic was filled with so much furniture and debris (including jars of unidentified origin or species) that he had to break through the lower ceiling to provide access to remove all of the times; foundation cracking which required masonry work to seal; substandard electrical system which required a new electrical panel and wiring; non-working HVAC system which required the installation of a new system; substandard and archaic plumbing fixtures which required new plumbing and new bathrooms, and windows that required the installation of all new windows. J-10.

approval of a hardship waiver, pursuant to N.J.A.C. 10:71-4.10(q), is unnecessary, and I
MODIFY the Initial Decision accordingly.

THEREFORE, it is on this 5th day of OCTOBER 2021,

ORDERED:

That the Initial Decision is hereby MODIFIED as set forth herein; and

MCBSS is directed to take action in accordance with this decision.



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