



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES

D.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES AND  
ATLANTIC COUNTY DEPARTMENT  
OF FAMILY AND COMMUNITY  
DEVELOPMENT,  
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 11556-2020

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 13, 2020, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated November 19, 2020, the Atlantic County Department of Family and Community Development (Atlantic County) granted Petitioner's January 17, 2020

application with eligibility as of April 11, 2021 and imposed a penalty of 253 days, from August 1, 2020 through April 10, 2021, resulting from the sale of Petitioner's property (property) for \$90,797.22 less than fair market value. Petitioner's son and POA, K.G., appealed the transfer penalty on Petitioner's behalf.

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. N.J.A.C. 10:71-4.10(j). Based upon my review of the record, I hereby ADOPT 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, as a certified appraisal of the property was not submitted, Atlantic County determined that the fair market value of the property was \$135,797.22, which reflected the equity value of the property at the time of its sale in August 2016, pursuant to N.J.A.C. 10:71-4.1(d)1iv.<sup>1</sup> Because the property sold for only \$45,000, Atlantic County assessed a transfer of assets in the amount of \$90,797.22. P-2.

At the fair hearing in this matter, it was determined Petitioner has resided in an assisted living facility since April 2016. ID at 3. Prior to that time, Petitioner resided with her companion at his residence. Ibid. Petitioner’s property was, thus unoccupied. Ibid. After her companion’s death, Petitioner’s children intended to move Petitioner back into her

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<sup>1</sup> The tax assessed value of the property when it was sold in August 2016 was \$183,400. That amount divided by 1.063, which is the Atlantic County assessment ratio for Buena Vista Township, New Jersey in the State Table of Equalized Valuations, results in a valuation of \$172,530.57. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Atlantic County, 2016, <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>. Because Atlantic County determined that mold remediation and septic repairs were necessary to sell the property, it reduced this valuation by \$36,733.35 and determined that the equity value of the property was \$135,797.22. ID at 4-5.

property; however it was discovered that Petitioner needed more care than her children could provide her and that the property needed black mold remediation and a new septic system. Ibid. Petitioner's children were advised by Petitioner's assisted living facility that Petitioner would need to personally pay for the facility's costs for a period of two years prior to qualifying for Medicaid. Ibid. Two days after Petitioner entered the assisted living facility, Petitioner's daughter hired a realtor and put Petitioner's property on the market "as is." Ibid. The property was not appraised and was initially listed for \$89,900, which was dropped to \$45,000 when it sold to Daniel Torres and his partner David Clark, Jr. Ibid. At some point prior to the closing in this matter, Petitioner's daughter discovered that Mr. Torres was another realtor, CEO, and team leader in the listing realtor's office and that Mr. Torres supervised the listing relator.<sup>2</sup> Ibid. Moreover, it was discovered that Mr. Clark owned two construction business that provided some of the renovation work after the sale. Id. at 3-4: On June 29, 2020, Mr. Torres advised Petitioner's children in an email that he had no familiar relationship or friendship with Petitioner, but the email did not mention Petitioner's children. Id. at 4. Accordingly, the ALJ noted that there was an appearance that the sale was not an arm's length transaction. Ibid.

K.G. requested that comparable sales in the area and post-sale renovation expenditures submitted by Mr. Torres and Mr. Clark's company be used to determine the fair market value of the property. However, as found by the ALJ, the comparable sales provided were short sales and do not accurately reflect the fair market value of the properties at the time they were sold. The sale of Petitioner's property was also not a short sale. Additionally, the renovation expenditures occurred in the months following the house being sold and appear to be mostly cosmetic upgrades in order for Mr. Torres and Mr. Clark to flip the property.<sup>3</sup> Absent a certified appraisal for the property and documentary evidence to support

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<sup>2</sup> Petitioner's daughter negotiated the listing, sale, and closing on the property. Id. at 4. However, she did not testify at the hearing, and K.G. was unaware of when his sister discovered Mr. Torres's status as the CEO/Team Leader during the sale negotiations. Ibid.

<sup>3</sup> The renovation expenditures include the installation of a new shower, new bathroom

Petitioner's contention that the house was in a dilapidated condition at the time of the sale and could not be sold for \$135,797.22, I FIND that the fair market value of the property at the time of its sale was \$135,797.22, as determined by Atlantic County in this matter.

Further, I agree with the ALJ's assessment that Petitioner's children sold the property in order to meet the personal pay and spenddown requirements in order to establish Medicaid eligibility. ID at 7. Petitioner's representatives have failed to present any documentation to support a finding that the sale of the property for less than the fair market value determined by Atlantic County was solely for any reason other than to establish Medicaid eligibility. Moreover, I concur with the ALJ's determination that Petitioner's daughter advising her realtor that she wanted to sell the property at a "quick sale" with a "significant price reduction" shows that there was no attempt by Petitioner's representatives to obtain the fair market value for the property. Ibid.

Petitioner now also requests that she be entitled to an undue hardship exemption to waive the penalty imposed, pursuant to N.J.A.C. 10:71-4.10(q). However, Petitioner was required to submit "sufficient documentation to support the request for an undue hardship waiver to the county welfare agency within 20 days of notification of the transfer penalty." N.J.A.C. 10:71-4.10(q). As Petitioner failed to submit her request for a waiver within twenty days of the transfer penalty determination letter, the ALJ does not address the issue of the waiver in the Initial Decision in this matter. I additionally note that Petitioner also did not request the waiver as part of her fair hearing request in this matter and therefore, it was not transmitted by DMAHS to the OAL as a contested matter in this case. Accordingly, I make no determination related to Petitioner's undue hardship exemption request.

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision, concluding that the Petitioner sold the property for less than fair

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faucets, new hardwood flooring, an architectural proposal to covert an existing basement room into a bedroom and add a bathroom, new kitchen appliances, and a kitchen "uplift." ID at 5.

market value and the 253-day transfer penalty assessed to Petitioner be upheld as the Petitioner failed to rebut the presumption that the transfer was done for the purpose of qualifying for Medicaid.

THEREFORE, it is on this 9th day of DECEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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