



totaling \$73,486.73 during the look-back period. Petitioner's daughter, K.S., appealed the transfer penalty on Petitioner's behalf.

The Initial Decision upholds the transfer penalty related to the \$73,486.73 in transfers, as Petitioner did not rebut the presumption that the transfers were 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.

In the present matter, Morris County conducted a review of Petitioner's financial documents and identified twenty-four unaccounted for transfers between April 3, 2015 and April 22, 2019 totaling \$159,700.<sup>1</sup> R-3. However, in late 2019, several repayments were made, totaling \$86,213.27,<sup>2</sup> which Morris County credited to Petitioner. Ibid. Therefore, the transfers at issue in this matter are the remaining transfers totaling \$73,486.73. Most of these remaining transfers were made to K.S. or to "cash." Ibid.

K.S. testified that, with the exception of the \$13,500 transfer on July 6, 2016, all of the cash withdrawals and checks made out to her were payments made by Petitioner to cover Petitioner's expenses. ID at 4. K.S. stated that she took care of Petitioner in K.S.'s house, drove Petitioner to doctors' appointments, and paid for Petitioner's food, medications, and trips. Ibid. When specifically asked about the \$32,000 transfer to her on May 16, 2016, K.S. stated that she and Petitioner had an "informal verbal agreement" beginning in September 2013, wherein Petitioner agreed to pay K.S. \$1,000 per month to cover Petitioner's expenses, such as groceries, utilities, and medical care. Id. at 5. K.S. asserted that the \$32,000 transfer was to pay K.S. for the period between September 2013 and May 2016. Ibid. K.S. provided

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<sup>1</sup> Morris County set forth the following transfers made between April 3, 2015 and April 20, 2019: \$1,200 to K.S. on 4/3/2015; \$15,000 withdrawal for vehicle purchase on 9/14/2015; \$700 to K.S. on 11/3/2015; \$500 to K.S. on 3/4/2016; \$32,000 to K.S. on 5/16/2016; \$500 to K.S. on 6/9/2016; \$13,500 to K.S. on 7/6/2016; \$1,000 to K.S. on 7/6/2016; \$500 to K.S. on 7/8/2016; \$300 to K.S. on 7/19/2016; \$500 to cash on 7/22/2016; \$700 to cash 7/25/2016; \$700 to K.S. on 10/8/2016; \$200 to K.S. on 10/12/2016; \$500 to K.S. on 11/4/2016; \$500 to cash on 12/2/2016; \$1,000 to grandchild and husband on 12/25/2016; \$1,000 to K.S. on 1/5/2017; \$15,500 to E.M (family member ) on 4/16/2019; \$15,500 to K.S. on 4/18/2019; \$15,500 to C.S. (K.S.'s husband) on 4/19/2019; \$15,500 to a family member on 4/19/2019; \$13,700 to R.M. (family member) on 4/20/2019 and \$13,700 to D.M (family member) on 4/22/2019). R-3.

<sup>2</sup> K.S. repaid a total of \$43,313.27 (\$15,500 on 7/8/2019, \$12,300 on 8/9/2019, \$12,210 on 9/17/2019 and \$3,303.27 on 12/20/2019). Ibid. It is unclear which repayments from K.S. correspond to which transfer set forth above. A family member repaid \$15,500 on 9/13/2019, which corresponds to the \$15,500 transfer on 4/19/2019, and R.M. and D.M. returned \$27,400 on 10/8/2019, which correspond to the \$13,700 transfers made to each of them on 4/20/2019 and 4/22/2019, respectively. Ibid. Morris County credited Petitioner for each of these repayments.

a notarized letter that was signed by Petitioner on June 15, 2020 to support this assertion. Ibid. The ALJ determined that this letter was hearsay and was only recently drafted for the purpose of supporting Petitioner's Medicaid application. Ibid. Aside from this letter, there is no writing that memorialized any agreement between Petitioner and K.S. that preexisted the delivery of the care or services to Petitioner. Further, no documentation was provided that showed Petitioner's specific monthly expenses that were allegedly covered under this agreement.

N.J.A.C. 10:71-7.10(b)6ii provides that "[i]n regard to transfers intended to compensate in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation." However, this "presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of care or services indicating the type and terms of compensation [and] the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community." N.J.A.C. 10:71-7.10(b)6ii. Thus, Petitioner bears the burden to demonstrate through credible documentary evidence that an agreement establishing the services and compensation existed prior to the services being rendered. In addition, the Petitioner must demonstrate the types of services provided and the terms of compensation, including a demonstration that the compensation for the rendered services was equal to the prevailing rates for similar services. In the present matter, K.S., on Petitioner's behalf, failed to present any preexisting documentary evidence that showed that, prior to the alleged services being rendered, there was an expectation that K.S. would provide services or care for Petitioner and that Petitioner would compensate K.S. for said services or care. The June 15, 2020 letter that was provided was drafted several years after the alleged informal agreement between K.S. and Petitioner was entered into and was drafted for the sole purpose of supporting Petitioner's Medicaid application during the month prior to Morris County issuing its determination letter on Petitioner's application. Accordingly,

the June 15, 2020 letter does not overcome the presumption that any past services or care that were rendered by K.S. to Petitioner were intended to be delivered without compensation, pursuant to N.J.A.C. 10:71-7.10(b)6ii.

K.S. additionally testified that the July 6, 2016 transfer in the amount of \$13,500 to K.S. and the December 25, 2016 transfer to Petitioner's granddaughter and her husband were gifts from Petitioner. ID at 5. In relation to the \$15,000 transfer on September 14, 2015, K.S. testified that the money was used to purchase an SUV since K.S.'s vehicle did not accommodate Petitioner. Ibid. K.S. testified that she drove Petitioner because Petitioner was unable to drive herself, and the SUV was more comfortable for Petitioner. Ibid. However, the SUV was not purchased in Petitioner's name and no documentation concerning the car or its purchase was provided. Ibid.

In relation to the other transfers at issue, the ALJ noted that in July 2016 alone, there were five additional checks made out to K.S. or to "cash" that totaled \$3,000. Ibid. However, there is nothing in the record that explains the purpose of these transfers. Moreover, in the months immediately preceding Petitioner's move into a nursing facility in 2019 and applying for Medicaid benefits in September 2019, several transfers totaling \$89,400 were made to Petitioner's family members. R-3. Specifically, between April 16, 2019 and April 22, 2019, there were four transfers of \$15,500 each and two transfers of \$13,700 each made to Petitioner's family members. R-3. While some of these transfers were repaid, no documentation was provided explaining purpose of the transfers that were not repaid. Additionally, no documentation was provided to explain any of the other transfers at issue. ID at 6. K.S.'s testimony alone, without supporting documentary evidence to show the purpose of each of the transfers in this matter, is insufficient to rebut the presumption. Accordingly, Petitioner failed to show that the transfers at issue were exclusively for some other purpose other than to establish Medicaid eligibility.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter, which totaled \$73,486.73, were made in order to establish Medicaid eligibility.

THEREFORE, it is on this 6th day of AUGUST 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