



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

E.B.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BURLINGTON COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 07863-20

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 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 April 8, 2021 in accordance with an Order of Extension.

An application was filed on Petitioner's behalf on April 30, 2020. On July 15, 2020, Burlington County Board of Social Services (BCBSS) granted Petitioner's application with eligibility as of July 1, 2020. However, a penalty of 155 days was assessed resulting from the sale of Petitioner's property (the property) for \$55,652.87 less than fair market value

during the look-back period. Petitioner's daughter and power of attorney, L.W., 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). 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 ALJ correctly noted that 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. 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. The regulation is very specific and does not leave room for interpretation. The clarity of the regulation provides for a uniform determination of the value of property.

Here, the Administrative Law Judge (ALJ) correctly found that when the property was sold in 2018, the fair market value of the home was \$140,816.¹ R-1 at Exhibit 7. However, Petitioner, through L.W., sold the property for \$85,163.13, leaving a difference of \$55,652.87. Id. at Exhibit 5. While the ALJ found that L.W.’s testimony on behalf of Petitioner was credible, L.W. failed to supply documentation such as legal documents, realtor agreements, relevant correspondence, or an appraisal of the value of the property prior to its sale that would support her testimony that the house was in need of serious repairs and could only be sold for less than fair market value. Additionally, the failure to supply documentation does not support L.W.’s testimony that the transfer was made exclusively for some other purpose than to qualify for Medicaid. Moreover, as found by the ALJ, the property was sold to a relative of L.W. and thus, was not sold in an arm’s length transaction to a third party with no familial or other relation to Petitioner or L.W. ID at 8.

¹ While the ALJ stated that Gleneta Blackshear, Paralegal Specialist for BCBSS, testified that BCBSS did not use the Table of Equalized Valuations to determine the value of the property because they had information reflecting the total market value of the property at the time of the sale, the total equity value of the property reflects the same amount. Specifically, the tax assessed value of the property when it was sold in November 2018 was \$115,300. That amount divided by .8188, which is the Burlington County assessment ratio for Mansfield Township, New Jersey in the State Table of Equalized Valuations, results in an equity value of \$140,816. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Burlington County, 2018, <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.

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 market value and the 155-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 6th day of APRIL 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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