

of Social Services (OCBSS) granted Petitioner's application with eligibility as of June 1, 2020. However, a penalty of 307 days was assessed resulting from the transfer of \$110,044.01 less than fair market value during the look-back period. L.S. 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). I concur. 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 record in this matter shows that L.S. became Petitioner’s POA on or around January 9, 2009, which gave her a general grant of authority, which included banking powers. R-2. L.S. stated that she took over Petitioner’s finances some time during October or November 2019. P-3. In November 2019, Petitioner was hospitalized and was eventually moved into an assisted living facility in February 2020. ID at 3. Petitioner was residing in the assisted living facility when the Medicaid application in this matter was submitted in April 2020. Id. at 2. Petitioner’s application listed two checking accounts as assets. R-1. During the review of Petitioner’s application, OCBSS identified twenty-three, substantial withdrawals and transfers from the two checking accounts between April 22, 2016 and November 5, 2019, totaling \$110,044.01.² R-4. Twenty-one of the aforementioned transactions related to checks made payable to Petitioner’s grandson,

² The Initial Decision sets forth twenty-four transactions; however this appears to be incorrect. As set forth in Exhibit R-4, only twenty-three transactions, totaling \$110,044.01, are at issue in this matter. See R-4. The additional transaction set forth in the Initial Decision provides that a check for \$8,000 was drawn from Petitioner’s account on May 10, 2019 and was made payable to her grandson, T.S. ID at 5. This transaction does not correlate to any transaction found by OCBSS. R-4. Additionally, the amount of two of the checks referenced in the Initial Decision do not correlate to the amounts set forth by OCBSS in Exhibit R-4. Specifically, the December 15, 2017 check made payable to T.S. was issued in the amount of \$3,000, rather than \$5,000 as set forth in the Initial Decision and the May 23, 2018 check made payable to T.S. was issued in the amount of \$22,910.00, rather than \$22,910.88 as set forth in the Initial Decision. See R-4. While the amounts of these specific transactions were incorrectly set forth in the Initial Decision, the total amount of the transactions at issue was correctly stated in the Initial Decision as \$110,044.01.

T.S, which totaled \$98,334.69. Ibid. The two remaining transactions related to a deposit of \$1,709.42 into L.S.'s bank account and an unaccounted for \$10,000 withdrawal. Ibid.

On June 25, 2020, OCBSS notified L.S. of the aforementioned transactions and advised that it was seeking to impose a transfer penalty as a result of the withdrawals and transfers. Ibid. L.S. asserted that the transactions were not made in anticipation of Petitioner's Medicaid application, the transactions were executed during a time when Petitioner was in charge of her own finances, and the money that was given to T.S. was to help him out and compensate him for things he did for Petitioner. ID at 5-6. On July 17, 2020, Petitioner's Medicaid application was approved effective June 1, 2020; however, OCBSS assessed a 307 day period of ineligibility due to the transfers. R-3.

At the hearing, L.S. was unable to recall what the December 2, 2016 withdrawal in the amount of \$10,000 and the June 3, 2019 transfer in the amount of \$1,709.32 were used for, and was additionally unable to provide any documentation for the distribution of any of the funds at issue in this matter. ID at 3. While L.S. stated that she is unable to reconstruct the purposes behind Petitioner's financial transfers because Petitioner is unable to provide assistance, L.S. was appointed as Petitioner's POA approximately seven years prior to the first transaction at issue in this matter. Id. at 5 and R-2. L.S. further stated that she provided a "watchful eye" over Petitioner while she allowed Petitioner independence in managing her own finances. P-3. Additionally, L.S. was listed as a joint account holder with Petitioner on one of the bank accounts owned by Petitioner during the time that at least two of the transfers, both dated May 20, 2019, totaling \$11,000, were issued to T.S. R-4. Further, all of the identified transfers at issue in this matter were issued to either L.S. or her son, T.S. Ibid.

While L.S. failed to present receipts or other documentation related to the transactions at the hearing, she did present a written document from T.S., who did not testify on Petitioner's behalf at the hearing, that asserted that the funds provided to him by Petitioner were for T.S. to purchase a new car, pay rent and general expenses, and help with expenses related to T.S.'s house-flipping business. P-1. The document further provided that some checks were made payable to him for use by Petitioner during their monthly Atlantic City casino trips. Ibid. Lastly, the document asserted that Petitioner provided T.S. with checks for renovation and repairs for Petitioner's home and for shopping. Ibid.

As noted by the ALJ, T.S.'s statement is considered hearsay. While hearsay evidence is admissible during contested cases before the OAL, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). A finding of fact cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972). In the present matter, neither L.S. nor T.S. pointed to any specific transactions that were considered payments in exchange for work performed or services provided by T.S. for Petitioner's benefit or that were used directly to benefit Petitioner. Moreover T.S. and L.S. failed to provide any documentation, such as receipts for home improvement or other repairs made to Petitioner's home or other purchases made for Petitioner's benefit that would support T.S.'s written statement. While some of the checks made payable to T.S. at issue in this matter contained notations in the memo line that stated "A.C.", "Trip", "Car Repair", and "House Repair", neither T.S. nor L.S. provided any

documentation that showed that these amounts paid by Petitioner to T.S. were actually for trips or repairs benefiting Petitioner or if the dates set forth on those specific checks lined up with the dates of alleged services provided to Petitioner. See R-4. Accordingly, the ALJ correctly found that T.S.'s statement cannot be accepted as legally competent evidence to support a finding that the funds at issue in this matter were used to pay for services provided to Petitioner by T.S. ID at 12.

Even if the transactions discussed above were found to be for Petitioner's benefit, it is impossible to determine whether Petitioner paid the fair market value for any alleged services rendered because no documentation was presented regarding the purpose of the transactions. Further, the ALJ correctly found that some of the transactions at issue were gifts to T.S. without consideration received in exchange. R-4. In addition, several of the transfers to T.S. were also noted as loans in the memo line of the checks. R-4. Accordingly, these transactions do not appear to have been given by Petitioner in exchange for her own benefit, but were rather loans provided to T.S. for his benefit that would need to be repaid to Petitioner at some point. However, there is nothing in the record to support a finding that T.S. repaid these loans to Petitioner.

Thus, no legally competent evidence had been presented on Petitioner's behalf that would support a finding that the transfers at issue in this matter represented payments that were exchanged for work or services performed for Petitioner's benefit or were exchanged for the fair market value of the amounts transferred. In light of the foregoing and for the reasons set forth in Initial Decision, I FIND that Petitioner has not presented sufficient evidence to rebut the presumption that the transfers totaling \$110,044.01 were done for the purpose of qualifying for Medicaid and therefore, the imposed penalty of 307

days should be upheld.

THEREFORE, it is on this 26th day of APRIL 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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