



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

J.P.,

PETITIONER,

v.

OCEAN COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 00710-21

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. Neither Party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 17, 2021 in accordance with N.J.S.A. 52:14B-10 which requires the Agency Head to adopt, reject or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on August 4, 2021.

Based upon my review of the record, I hereby adopt the findings and conclusions of the Administrative Law Judge in their entirety, and I incorporate the same herein by reference. In a thorough, well-reasoned decision, the ALJ affirmed the 125-day transfer penalty. In reaching this decision, I accept the ALJ's fact-findings, which are based, in part, upon her assessment of the witnesses who testified at the administrative hearing. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 575 (1988).

At issue is a 125-day penalty imposed due to Petitioner's transfer of \$44,950 during the look-back period. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted "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).

On May 4, 2020, Petitioner, through her attorneys, filed a Medicaid application with the Ocean County Board of Social Services (OCBSS). Petitioner is eighty-nine years old and is currently in hospice care at an assisted living facility. Petitioner's son, J-P.P. testified on her behalf. J-P.P. has been Petitioner's Power-of-Attorney (POA) since 2014 or 2015. He argues that Petitioner received fair market value for the transferred assets by asserting that checks written to himself were either gifts or compensation for services and that other gifts to family members were not improper. Neither of these arguments is supported by the record.


At issue are seven checks totaling \$44,950. Five of the seven checks were issued by J-P.P. to J-P.P., and two of the checks were issued by J-P.P. to his sister. Of the five checks issued to J-P.P., four are purportedly for services performed on behalf of the Petitioner. J-P.P. provided no documentation detailing the services to be performed or the agreed upon rate of pate. Nor did he provide any documentation detailing the amount of time spent on services performed or the fair market value of said services.

I FIND that Petitioner has failed to rebut the presumption that the transfers were solely for a purpose other than qualifying for Medicaid. J-P.P. wrote seven generous checks to himself and his sister that do not relate to an identified expense that was for Petitioner's sole benefit. Two of the transfers occurred while Petitioner resided in an active adult community with a full-time aide. The remaining five transfers occurred after Petitioner entered an assisted living facility. At the time of the transfers, Petitioner was already in need of assisted living services so that Medicaid would likely have been considered. Additionally, I note that none of the factors in N.J.A.C. 10:71-4.10(k) were demonstrated by Petitioner that might give rise to the transfers being exclusively for a purpose other than to qualify for Medicaid.

THEREFORE, it is on this 13th day of SEPTEMBER 2021,

ORDERED:

That the Initial Decision is ADOPTED.



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