



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712
TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SARAH ADELMAN
Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

M.F.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	ORDER OF REMAND
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 02078-2021
	:	
AND HEALTH SERVICES AND	:	
	:	
MONMOUTH COUNTY DIVISION	:	
	:	
OF SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), 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 January 10, 2022 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 January 12, 2021, the Monmouth County Division of Social Services (MCDSS) granted Petitioner's September 2020 application with eligibility as of November 1, 2020. However, a penalty of 865 days was assessed resulting from the sale of

Petitioner's property (the property) for \$293,014 for less than fair market value and various cash transfers in the amount of \$16,644 during the look-back period.

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.

On September 5, 2015, Petitioner executed a deed that transferred her property to her children, G.V. and A.F., for the sum of \$1.00. R-5. The deed was recorded at the Monmouth County Clerk's Office on September 23, 2015. Ibid. Petitioner filed an application for Medicaid benefits on September 19, 2020. R-1. In reviewing Petitioner's application, MCDSS identified cash transfers totaling \$16,644 that occurred between 2016 and 2020 from

Petitioner's Santander Bank account. R-7. On December 8, 2020, MCDSS requested verification of these transactions. Ibid. On December 23, 2020, Petitioner provided a self-attestation letter that provided that she "had a verbal agreement with her children for home expenses [such as] homeowner's association, partial payment of taxes, water bill, home insurance, as well as utilities, and work on [the] house." R-8. Petitioner did not provide a pre-existing contract for the home expenses and did not provide any documentation supporting her payment of these expenses. MCDSS determined that the \$16,644 in cash transfers and the transfer of Petitioner's property were made for less than fair market value during the five-year look-back period and assessed a total transfer penalty in the amount of \$309,658.82. By letter dated December 23, 2020, MCDSS notified Petitioner of its intent to impose the 865 day penalty for the transfers and provided Petitioner until January 12, 2021 to respond to the letter. R-9. Petitioner did not respond.

As it relates to the cash transfers totaling \$16,644, the Administrative Law Judge (ALJ) found that the Petitioner failed to sufficiently explain how the funds were spent and did not offer sufficient, credible evidence to dispute the imposed penalty. I concur. Petitioner failed to produce any documentation that would support Petitioner's self-attestation that these funds were used to pay for her living expenses. Accordingly, I FIND that Petitioner did not rebut the presumption that the \$16,664 in cash transfers were made for the purposes of qualifying for Medicaid and the penalty imposed on these transfers was appropriate.

In relation to the transfer of Petitioner's property, the ALJ found that because the deed was executed on September 5, 2015 and Petitioner filed for Medicaid benefits on September 19, 2020, the transfer of the property was outside of the five-year look-back period and therefore, the penalty imposed on that transfer was improper. I concur with the ALJ's assessment that, in this matter, the execution date of September 5, 2015, rather than the recordation date of September 23, 2015, is the date upon which the property was transferred. See H.K. v. State of New Jersey, 184 N.J. 367 (2005). However, Petitioner's application

notes that she previously filed a Medicaid application. R-1. Each applicant has a baseline look-back period regardless of how many applications are filed. The federal government has directed states to calculate the lookback period based upon the first application for Medicaid. See State Medicaid Manual §3258.4(C). Accordingly, I am unable to make a determination related to the penalty imposed in relation to the transfer of Petitioner's property until it is determined whether the present application, filed on September 19, 2020, was Petitioner's first Medicaid application. I, therefore, REMAND the matter to the OAL solely for further fact-finding and development of the record in relation to whether and on what date Petitioner had previously filed a Medicaid application.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the Initial Decision as it relates to the \$16,644 cash transfers and REMAND the matter as it relates to the transfer of Petitioner's property to the OAL for further development of the record in accordance with this decision.

THEREFORE, it is on this 23rd day of DECEMBER 2021

ORDERED:

That the Initial Decision is hereby ADOPTED in part, as set forth above; and

That the matter is REMANDED to the OAL for further development of the record as set forth above.



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