

280 days was assessed, resulting from transfers totaling \$100,161.37 for less than fair market value during the five-year look-back period. R-4.

The Initial Decision upholds the transfer penalty, as Petitioner did not rebut the presumption that the transfers were done for the purpose of qualifying for Medicaid. See 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.

Here, the Administrative Law Judge (ALJ) found that on September 21, 2020, a Medicaid application was filed on Petitioner's behalf by her Designated Authorized Representative (DAR), Sara Krupenia of Elderguide. R-1. Petitioner was residing in a nursing facility at the time of her application, and her son, D.M. held a power of attorney (POA) for Petitioner. R-3. MCBSS determined that Petitioner transferred the following resources for less than fair market value: (1) withdrawals from one Manasquan account totaling \$1,250; (2) withdrawals from a second Manasquan Bank account totaling \$14,992; (3) withdrawals from Metuchen Savings account totaling \$47,392.76; and a gift to D.M from Wolfe Ossa Law Trust totaling \$36,526.61. R-4. The total amount of transferred resources was \$100,161.37. Ibid. Petitioner is only challenging the transfer penalty associated with the transactions involving the Metuchen Savings account. ID at 3. Each of those transactions related to a cash withdrawal or a check that was written to "cash"¹ in amounts between \$2,400.76 and \$2,900.² Ibid. The total amount of the transfers, which took place between November 2015 and June 2017, was \$47,392.76. R-5.

At the hearing in this matter, D.M. testified that his parents did not use credit cards and that they lived "month to month" with no money to spare for gifts. ID at 5. He stated that their money was used to pay for food, clothing, quarterly taxes, utilities, and "any other expenses that came up." Ibid. D.M. further noted that receipts were not saved because each expenditure was a small amount and they did not think it would be necessary to save documentation of their payments. Ibid. D.M. stated that after his father passed away, Petitioner destroyed documents. Ibid.

¹ All of the transactions involved checks made out to "cash" except for a June 23, 2017 cash withdrawal of \$2,900, identified as "withdrawal retail banking." R-6.

² All but one of the checks was made in the same amount of \$2,476. Ibid. Check number 170, which was written to "cash" on May 3, 2017, was written in the amount of \$2,400.76. R-7.

To support his contentions that the transactions at issue were to pay for Petitioner's bills, D.M. provided property tax and utility records after the hearing in this matter. P-2. However, the utility bills provided are from June 22, 2020 through July 27, 2021, which was after the last transaction at issue in June 2017. Ibid. I additionally note that much of this time period was after Petitioner began residing in a nursing facility, which occurred sometime prior to her September 2020 Medicaid application being filed. ID at 2. Further, utility statements provided list D.M. as the responsible party. P-2. It is unclear whether this would be a reference to Petitioner's son or Petitioner's husband. However, Petitioner's husband had passed away several years prior to the statement dates provided. ID at 9. The utility statements provided only show that payments were made on the account and do not show the method of payment or who made the payment. P-2.

The Tax Account Detail Inquiry (tax inquiry), dated August 17, 2021, reported data for the tax years 2015 through 2017 for Petitioner's previous residence. Ibid. The tax inquiry provides that for the years 2015 and 2016, Petitioner paid for her quarterly property taxes by use of checks rather than cash. Ibid. For 2017, two of the quarterly tax payments were paid by check and two quarterly payments have no method of payment listed. Ibid. Check images provided show that at least six out of the ten quarterly property tax payments that were paid through the issuance of checks were made through checks issued on the account in question. R-7.

The ALJ found that Petitioner had failed to demonstrate that the transfers at issue were used to pay Petitioner's bills. I concur. While D.M. testified that his parents withdrew the money to pay for their expenses, including their quarterly property tax payments and utility bills, Petitioner has failed to supply any supporting documentation showing that the actual funds withdrawn from the bank account at issue were used in this way. The documentation supplied actually contradicts these assertions. Specifically, while Petitioner paid her quarterly property tax payments from the bank account in question, she paid, in

large part, through the issuance of checks made payable to the township directly. R-7. She, therefore, did not use the transferred funds at issue to pay for these bills, as D.M. alleged. Moreover, the utility statements provided by D.M. are not for the period at issue and were mostly for the period of time when Petitioner no longer resided at that residence. The statements additionally do not show who made the payments or the method used to make the payments. No other documentation was supplied that supports a finding that the transferred funds were used to pay for any other bill, good, or service on Petitioner's behalf.

Accordingly, and based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision, concluding that the 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 14th day of DECEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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