



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

M.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MONMOUTH COUNTY DIVISION

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 11057-2020

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 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 September 30, 2021 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 October 27, 2020, the Monmouth County Division of Social Services (MCDSS) granted Petitioner's April 30, 2020 application with eligibility as of June 1, 2020. However, a penalty of 25 days was assessed resulting from transfers totaling \$9,000

during the look-back period. Petitioner's son and Power of Attorney (POA), J.M., appealed the transfer penalty on Petitioner's behalf.

The Initial Decision reverses the imposition of a transfer penalty related to \$5,658 of the transfers at issue, as the Initial Decision found that Petitioner rebutted the presumption that this transfer amount was done for the purposes of qualifying for Medicaid, and upholds the transfer penalty related to the remaining \$3,342, as Petitioner did not rebut the presumption that the remaining transfer amount was 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 in part and REVERSE in part 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.

In the present matter, MCDSS identified four transfers that were made to J.M. and Petitioner's daughter, S.M., between September 29, 2016 and February 16, 2017, totaling \$9,000. R-2. Specifically, on September 29, 2016, there was a \$6,000 transfer to J.M, on November 26, 2016, there was a \$1,000 transfer to S.M., on December 23, 2016, there was a \$1,000 transfer to S.M, and on February 21, 2017, there was a \$1,000 transfer to J.M. R-3. J.M. alleged that the \$6,000 payment to himself was reimbursement for funeral expenses for Petitioner's husband and the three \$1,000 payments to himself and S.M. were for caregiving services provided to Petitioner. Ibid. All of the transfers were issued by J.M. as POA from Petitioner's Wells Fargo bank account. Ibid.

Petitioner's husband passed away in July 2016, and the funeral expenses totaled \$5,658. P-1. J.M. paid for the funeral expenses with his credit card on July 4, 2016. P-2. Petitioner was not present and did not help plan the funeral, as she suffered from dementia. ID at 3. J.M. testified that he presented the POA document, which was active two months prior to Petitioner's husband's passing, to Wells Fargo and wrote a \$6,000 check to himself from Petitioner's bank account on September 29, 2016. R-3. J.M. alleges that the \$6,000 check was reimbursement for payment of the funeral expenses. The Initial Decision finds that a transfer penalty should not be imposed on \$5,658 of the \$6,000 check issued by J.M. to himself because J.M had rebutted the presumption that the \$6,000 check was used in part for reimbursement of Petitioner's husband's funeral expenses. ID at 7. I disagree. I FIND no nexus between the \$6,000 transfer and J.M.'s payment of the funeral expenses. While J.M. did pay for Petitioner's husband's funeral expenses, there is no proof in the record that a portion of the transferred funds were actually used to reimburse J.M. for the payment of funeral expenses. Moreover, the transfer occurred almost three months after J.M. paid for

the funeral expenses, and the amount transferred exceeded the amount set forth on the invoice from the funeral home and paid for by J.M., as set forth on J.M.'s credit card statement. See P-1 and P-2. Accordingly, as no nexus between the payment of the funeral expenses and the transferred funds has been shown, I REVERSE the Initial Decision's findings as they relate to \$5,658 of the \$6,000 transfer and FIND that J.M, on Petitioner's behalf, failed to rebut the presumption that the entirety of the \$6,000 transfer was made for the purposes of qualifying for Medicaid.

As it relates to the three \$1,000 payments issued to J.M. and S.M. for caregiving services, the Initial Decision found that there were no pre-existing agreements, records, invoices, contracts, receipts, or logs produced that documented caretaking services allegedly paid for by Petitioner. ID at 5 and 7. N.J.A.C. 10:71-7.10(b)6ii provides that "[i]n regard to transfers intended to compensate in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation." However, this "presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of care or services indicating the type and terms of compensation [and] the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community." N.J.A.C. 10:71-4.10(b)6ii. Thus, Petitioner bears the burden to demonstrate, through credible documentary evidence, that an agreement establishing the services and compensation existed prior to the services being rendered. In addition, the Petitioner must demonstrate the types of services provided and the terms of compensation, including a demonstration that the compensation for the rendered services was equal to the prevailing rates for similar services. In the present matter, J.M., on Petitioner's behalf, failed to present any preexisting documentary evidence that showed that, prior to the alleged services being rendered, there was an expectation that either J.M. or S.M. would provide services or care for Petitioner and that Petitioner would compensate J.M. and S.M. for said services or care. Accordingly, Petitioner has not

overcome the presumption that any past services or care that were rendered by either J.M. or S.M. to Petitioner were intended to be delivered without compensation, pursuant to N.J.A.C. 10:71-4.10(b)6ii.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision as it relates to \$3,342 of the transfers at issue and REVERSE the ALJ's recommended decision as it relates to the \$5,658 of the transfers at issue. Further, I FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter, which totaled \$9,000, were made in order to establish Medicaid eligibility, and therefore, the penalty imposed was appropriate.

THEREFORE, it is on this ^{27th} day of September 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part as set forth above.



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