



to Petitioner's children. ID at 2. Petitioner was institutionalized in 2020 and applied for benefits in July of that year. Union County assessed a fifty-six day penalty. Petitioner contends that she rebutted the presumption that the transfer was to qualify for Medicaid or, in the alternative, that she is eligible for a waiver of the penalty period due to the undue hardship provisions on N.J.A.C 10:71-4.10(q).

The Initial Decision found that Petitioner rebutted the presumption that the transfer was done for Medicaid purposes but did not demonstrate that she warranted a waiver of the penalty for an undue hardship. Based on my review of the record and under the unique circumstances of the case, I concur with these findings.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the 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). 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).

Petitioner, who resided with her spouse until July 2020, received an approximately \$100,000 inheritance from her sister in May 2018. R-2. Over the next few months, she made four gifts of \$5,000 to her children. The rest of the inheritance is not subject to

penalty. At the time the funds were transferred, Petitioner was residing in her home and had few infirmities. Petitioner did not divest herself of the entire windfall but sought to assist her children with financial assistance by transferring a quarter of the inheritance. She retained the majority of the funds for her own expenses. No transfers were made past the ones identified here. I agree that the purpose of the 2018 transfers were not to qualify for Medicaid.

Petitioner had also requested a waiver of the penalty. N.J.A.C. 10:71-4.10q(1)(i) provides that undue hardship exists when a transfer penalty “would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered” and when “the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred.” The Initial Decision found that Petitioner failed to meet either of the two prongs necessary to receive a waiver. The record supports this finding

THEREFORE, it is on this <sup>22nd</sup> day of JUNE 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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