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

N.B., PETITIONER, v. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES AND UNION COUNTY BOARD OF SOCIAL SERVICES, RESPONDENTS.	**ADMINISTRATIVE ACTION** **FINAL AGENCY DECISION** **OAL DKT. NO. HMA 05311-2021**

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 December 13, 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 May 11, 2021, the Union County Board of Social Services (UCBSS) granted Petitioner's October 20, 2020 Medicaid application with eligibility as of

October 1, 2020. However, a penalty of 1,060 days was assessed resulting in the transfer of assets, totaling $379,203.22, for less than fair market value during the five-year look-back period. The transfer of assets stem from the sale of Petitioner's property for $330,752 less than fair market value, transfers to Petitioner's son, P.B., totaling $34,451.22, and a transfer from Petitioner's bank account in the amount of $14,000.

The Initial Decision determined that Petitioner had shown that the transfer of his property to P.B. was exempted, pursuant to N.J.A.C. 10:71-10.7(d)4, that Petitioner had shown that the $34,451.22 loan to P.B. was paid back by services paid by P.B. on Petitioner's behalf, and that the $14,000 transfer from Petitioner's bank account was reimbursement to P.B. for overpayment of the loan balance through payment for those services. Based upon my review of the record, I hereby REVERSE 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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)4. This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." N.J.A.C. 10:71-4.10(d).

On October 20, 2020, Petitioner's son and power of attorney (POA),[1] P.B., filed an application for Medicaid benefits on Petitioner's behalf. R-2. With the application, P.B.

[1] A copy of the POA document was not admitted into the record in this matter. It is, thus,

submitted a certification, dated August 22, 2019,[2] attesting to the fact that P.B. had resided with his father for a period of five and one-half years and that he and his wife, C.B., were responsible for "100% of [Petitioner]'s food preparation, transportation, medication, doctor care, laundry, changing of clothes, and bathing." R-2. On the application, P.B. noted two transfers made. The first item transferred was listed as "House-Caregiver Child-Exempt" on August 22, 2019. R-2. The second item transferred was listed as "See attach sheet for transfer and repayment-completed!" between February 10, 2016 and August 12, 2019 in the amount of $51,077.33. Ibid.

Petitioner began residing in a nursing facility at or around the time that the Medicaid application was filed on his behalf.[3] Prior to that time, P.B. alleges that Petitioner resided at his own residence and at some point in time, P.B. and his wife, C.B. also began residing with Petitioner.[4] On August 22, 2019, Petitioner transferred his property to P.B. for the sum of $1.00. P-12. The deed provided that Petitioner "expressly reserves unto himself a life estate for the full benefit and use of the above-referenced premises and all rents, issues and profits thereof, for and during his lifetime." Ibid. Petitioner signed the deed himself and it was witnessed by Vincent Marcri, Esq., who certified that Petitioner "personally came before me and acknowledged, under oath, to my satisfaction, that this person . . . : (a) is named in and personally signed this Deed; (b) signed, sealed and delivered this Deed as his or her act and

---

unclear when P.B. became Petitioner's POA.

[2] The date of P.B.'s certification coincides with the date that Petitioner transferred his property to P.B. See P-12.

[3] It is unclear from the record the exact date that Petitioner began residing in the nursing facility. However, it appears that it was sometime between September and October 2020. See P-10 and P-11.

[4] I note, however, that the checks provided by P.B. to support payment for "caregiver" services were issued by C.B. through her personal checking account which listed an address in Hoboken, New Jersey as C.B.'s address. See P-7 and P-13. It is, thus, unclear from the record exactly when both P.B. and C.B. began residing with Petitioner or if they maintained residence at this address as well.

deed; and (c) made this Deed between parent and child for the sum of $1.00 as full and actual consideration paid or to be paid for the transfer of title." Ibid.

Through letters dated May 11, 2021 and May 12, 2021, UCBSS advised Petitioner that a transfer penalty of 1,060 days was assessed from October 1, 2020 through August 27, 2023 as a result of transfers made for less than fair market value, totaling $379,203.22. P-1 and R-1. UCBSS advised that the transfers resulted from the following: (1) a loan balance of $34,451.22 provided by Petitioner to P.B. to start a business;[5] (2) a $14,000 withdrawal from one of Petitioner's bank accounts on September 14, 2020; and (3) the transfer of Petitioner's house to P.B. for $330,752 less than fair market value. Ibid.

As it relates to the outstanding loan balance, Petitioner argues that the balance was actually satisfied by way of payments made by P.B. for Petitioner's benefit that totaled $48,650. ID at 3. Those payments are: (1) $12,500 for house cleaning services from June 28, 2017 through August 13, 2020; (2) $21,000 for siding and a new roof in August 2018; (3) $5,150 for a new driveway on June 12, 2020; and $10,000 in caregiver services from May 2018 through February 2020. Ibid. Additionally, as it relates to the $14,000 withdrawal on September 14, 2020, Petitioner alleges that because P.B. made payments on Petitioner's behalf totaling $48,650, but only owed $34,451.22, P.B. overpaid Petitioner by $14,197 and the withdrawal was made to compensate P.B. for said overpayment. Ibid. Lastly, Petitioner maintains that the August 22, 2019 transfer of his home to P.B. was covered under the caregiver child exemption, pursuant to N.J.A.C. 10:71-10.7(d)4, and should not have been included when considering the transfer penalty. Ibid.

In its May 11, 2021 determination letter, UCBSS stated that as it related to the loan balance, "[i]n kind items itemized cannot be counted towards the debt because these were not part of a contract which indicates that these would occur in lieu of cash payment for the

[5] As noted above, the initial transfer was the amount of $51,077.33. However, UCBSS credited Petitioner for repayments made by P.B. in the amount of $16,626.11, leaving an unpaid balance of $32,451.22. P-1 and R-1.

money owed." P-1 and R-1. As it relates to the $14,000 withdrawal, UCBSS advised that it "is considered a transfer since there is no contract for payment of cleaning the home and companion services as being part of the payback moneys given to [P.B.]." Ibid. Lastly, UCBSS stated that as it relates to the transfer of Petitioner's house, P.B. has not satisfied the requirements for a caregiver exemption because P.B. "has not provided documentation that he provided care for his father for period of two years, which allowed him to reside at home rather than in an institution or facility." Ibid.

In response to a rebuttal email received by UCBSS on May 20, 2021,[6] UCBSS issued a letter, dated May 24, 2021, which advised Petitioner, that the documentation provided to substantiate that the payment for services repaid the outstanding loan was insufficient and that "[t]here was no previous contract between the applicant and his son from the time period the loan was originated indicating that these services to various contractors would be accepted as payment towards the original debt." P-10. The letter additionally advised that since UCBSS could not accept payment for these services as repayment on the outstanding loan, it could also not accept that the $14,000 withdrawal constituted an overpayment of the loan. Ibid. Further, the letter advised that the transfer of Petitioner's property to P.B. does not meet the criteria to be accepted under the caregiver exemption, pursuant to N.J.A.C. 10:71-4.10(d)4. Specifically, the letter notes that the documentation submitted is insufficient to substantiate that P.B. provided care to Petitioner for a period of two years immediately preceding Petitioner's institutionalization and that the care provided by P.B. permitted Petitioner to remain at home rather than in an institution. Ibid. UCBSS advised that a certification provided by Dr. Robert B. Solomon documented an examination on February 19, 2019 and advised that Petitioner has Alzheimer's disease and needed additional care. Ibid. The letter stated that the certification cannot be used to document Petitioner's illness prior to February 19, 2019, and that the time period between February 19, 2019 and when Petitioner

[6] This letter/email was not entered into evidence in this matter.

entered into a nursing facility, September 21, 2020,[7] is less than two years apart. Ibid. Lastly, the letter advises that there is no evidence showing that P.B. cared for Petitioner or paid for full-time care for Petitioner, which allowed him to remain in the home. Ibid.

In response to a May 25, 2021 letter requesting a hardship waiver,[8] UCBSS issued a letter, dated June 21, 2021, advising that although Petitioner had an Alzheimer's diagnosis, the documentation provided does not indicate that he needed full-time care. P-11. Specifically, the letter advised that the documentation provided indicated that Petitioner was an oriented person to place and time, but did not indicate that he needed full-time care for the two years prior to institutionalization. Ibid. UCBSS additionally advised that P.B. had "not provided documentation indicating he provided care to his father that exceeded normal personal support activities, for a period of at least two years." Ibid. Further, the letter stated that a contract signed by both P.B. and Petitioner related to the repayment of the loan by P.B. paying for services such as new roofing and siding for the home, a new driveway, and companion and cleaning services has not been provided. Ibid. Lastly, the letter advises that Petitioner's petition for hardship cannot be considered because the transfer penalty will not cause an undue hardship on Petitioner, as the transfer of assets provision does not deprive Petitioner of medical care which would cause his health or life to be endangered. Ibid.

As it relates to the transfer of Petitioner's property to P.B., the Initial Decision found that Petitioner had proven that P.B. provided care at the required level for at least the previous two years prior to Petitioner's institutionalization and therefore, Petitioner was entitled to the caregiver exemption, pursuant to N.J.A.C. 10:71-10.7(d)4. ID at 8. I disagree. The care provided must be at a level so as to permit Petitioner to remain out of the nursing

---

[7] While the May 24, 2021 letter from UCBSS advises that Petitioner was admitted to the nursing facility on September 21, 2020, UCBSS's June 21, 2020 letter advises that he was admitted in October 2020. As previously noted, it is unclear from the record the exact date that Petitioner was admitted to the nursing facility. See P-10 and P-11.

[8] The May 25, 2021 letter was additionally not admitted into evidenced in this matter.

facility and was provided for two years prior to admission. While it is unclear from the record whether Petitioner entered into a facility in September or October 2020, Petitioner would have needed nursing home level of care since September or October 2018. To meet the nursing home level of care, an individual must be dependent in several activities of daily living (ADLs). N.J.A.C. 8:85-2.1(a)1. I cannot find the support in the record of Petitioner needing that level of care for the entire two year period.

At the hearing, Petitioner relied upon certifications from various individuals, including P.B., dated August 22, 2019; Robert B. Solomon, M.D., dated August 3, 2019; Betty Lim, M.D., dated July 6, 2021; Evelyn Stone,[9] a former, live-in caregiver/companion to Petitioner, dated July 2, 2021; Ellen Pariso, a former part-time companion to Petitioner, dated July 1, 2021 and August 20, 2020; and Sophia Gonclaves, owner of Dynamic Cleaning Services, dated July 1, 2021 and August 13, 2020 to support a showing that Petitioner needed care that exceeded personal support services for a period of at least two years immediately preceding his institutionalization and that P.B. provided those services during that time. See P-2, P-3, P-4, P-5, P-6, P-7, P-8, and P-9. However, only P.B., Dr. Lim, and Ms. Stone testified at the hearing and thus, the certifications provided from Dr. Solomon, Ms. Pariso, and Ms. Gonclaves are considered hearsay. While hearsay evidence shall be admissible during contested cases before the OAL some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). The finding of fact cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972). The statements and opinions contained in these certifications make ultimate conclusions related to Petitioner's

[9] Both certifications attributed to Eve Stone provided that her name was "Ev Stone." See P-6 and P-7.

mental status, diagnoses, and P.B.'s care of Petitioner without providing documentation that supported these conclusions.

The only supporting documentation provided with Ms. Pariso's certifications are copies of checks paid by C.B. for alleged companion services. P-6 and P-7. The memo line for many of the checks supplied state "care" and a date range while others only have a date range, state "care," or have nothing notated on the memo line.[10] P-6. Although there is no documentation to support that Ms. Pariso is qualified to assess and diagnose Petitioner's medical issues, her July 1, 2021 certification sets forth Petitioner's alleged diagnoses, the impact of those diagnoses on Petitioner's perception, behavior, and mental health,[11] and additionally, attests to what occurred in the household and Petitioner's care after she departed from her employment in February 2020. P-7. I additionally note that Ms. Pariso's first certification, dated August 20, 2020, provided that she provided "companion care" to Petitioner for ten hours per week, stating that she took Petitioner on walks, provided companionship to him, helped him bathing, hygiene, and preparing his food, and assured "his general well-being." P-7. However, her July 1, 2021 certification provided that "I previously provided a Certification and used the term companionship which I have come to learn is not considered special care or attention." P-6. Her July 1, 2021 certification then set forth additional services that she allegedly provided to Petitioner that she did not mention in her initial certification. Ibid. Because Ms. Pariso did not testify in this matter, she could not be asked about these changes in her certifications and a credibility determination could not be made. Accordingly, Ms. Parisio's certifications should not have been considered in making a determination in this matter.

---

[10] I also note that included in these check copies are checks issued to other individuals for services such roof and siding work and plumbing services. P-6. It is unclear why these check copies were included in Ms. Pariso's certification.

[11] For example, Ms. Pariso stated her opinion that "[i]f he were to live by himself, the isolation would as much kill him as walking into the street unaware of cars passing back and forth." P-6.

Similarly, the only supporting documentation provided with Ms. Gonclaves is a spreadsheet titled "DYNAMIC CLEANING SERVICES in [Petitioner's] home 6/28/17-present," which sets forth the date, service, payment method, and amount paid. R-8 and R-9. This documentation does not provide who paid Ms. Gonclaves for the services and what services besides "house cleaning" were provided. Additionally, her August 13, 2020 certification provides that she provided cleaning services for Petitioner's family on a bi-weekly basis since June 2017 "as a result of [Petitioner's] needs as a senior person." P-9. Ms. Gonclaves then amends this statement in her July 1, 2021 certification to now assert her opinion that the house would be unfit to live in and impact the family's health and well-being if she did not provide cleaning services and the cleaning required was a result of Petitioner's specific medical diagnoses. P-8. Because Ms. Gonclaves did not testify in this matter, she could not be asked about the basis for these opinions and a credibility determination could not be made. Accordingly, Ms. Gonclaves certifications should not have been considered in making a determination in this matter.

Lastly, Dr. Solomon's certification provides no supporting documentation to support the assertions contained therein, and the certification appears to be a form certification that was filled in by hand by Dr. Solomon on predetermined blank spaces for Dr. Solomon's field of specialty, when he received his degree, Petitioner's diagnosis, and the date of his examination of Petitioner. P-3. The certification sets forth a legal conclusion that the caregiving services provided to Petitioner allowed Petitioner to continue at home rather than be institutionalized. Ibid. However, no documentation showing the level of care that Petitioner needed as of the date of his examination was provided and no contemporaneous notes prepared by Dr. Solomon were admitted into evidence in this matter. Accordingly, Dr. Solomon's certification should have not have been considered in making a determination in this matter.

Further, while Dr. Lim, who consulted with Petitioner's family regarding Petitioner between August 2017 through January 5, 2018, certified and testified that Petitioner suffered from "dementia syndrome: possible Alzheimer's Dementia with probable underlying alcohol related Korsakoff's Syndrome," Dr. Lim's examinations of Petitioner, as set forth in her contemporary notes, do not show that the care level that Petitioner needed exceeded normal personal support activities and that Petitioner needed a nursing home level of care for the two years immediately preceding Petitioner's institutionalization. Dr. Lim's plan of care focused on reducing Petitioner's alcohol intake and supervision rather than any specific medical care necessity. P-4. Specifically the most recent examination of Petitioner completed by Dr. Lim was on January 5, 2018, and her notes stated that she was informed that Petitioner "cannot be left alone for long stretches [bc] he then walks to the liquor store."[12] P-4 at 6. These notes additionally provided that Petitioner "[d]oes not need help with ADLs just yet but [may] soon since his hygiene may soon be suffering." Ibid. Moreover, the notes stated that Petitioner is "oriented to season, place, and self only but not to date, day or year," "has good attention but very poor visual and spatial orientation and executive function as well as poor recall," and "ambulates without assistive device steadily." Id. at 5. Her notes further provided that Petitioner is "on minimal medications, is still very physically active (mows the lawn, attempted to shovel snow) and has stable medical conditions." Id. at 6. It is unclear what basis Dr. Lim relies upon in her certification, dated over three years after this examination, to now state that Petitioner required supervision of his activities of daily living and assistance with all instrumental activities of dialing living. P-4. As Dr. Lim's contemporaneous notes specifically provide that as of January 2018, Petitioner did not need assistance with his ADLs at that time and did not examine Petitioner within the relevant time period, i.e. September/October 2018 through September/October 2020, to determine if that

[12] I note that previously, on August 11, 2017, Dr. Lim noted that Petitioner does all of his drinking between 12pm and 6pm when no one is home and he walks to the liquor store by himself. P-4 at 12.

assessment had changed and to what extent, it cannot be determined that Petitioner's needed nursing home level of care for the two-year period immediately preceding Petitioner's institutionalization based on Dr. Lim's contemporaneous assessments.

Moreover, Ms. Stone's certification and testimony show that Petitioner needed normal support services and supervision, and nothing has been provided to support a finding that Petitioner needed nursing home level of care for this period of time. I note initially that Ms. Stone's certification, like the certifications of Ms. Pariso, make medical determinations related to Petitioner's condition without basis and additionally, assert information related to Petitioner's care after she left her employment with Petitioner's family. Ms. Stone's certification, dated in July 2021, over two years after she left her employment, seems to focus on Petitioner's alcohol usage, advising that Petitioner would "often" leave his house and was able to walk the half-mile to the local liquor store, unattended, to purchase "his favorite scotch." P-5. She additionally advised that falls were "exacerbated by his 'sneak drinking.'" Ibid. While Ms. Stone stated that Petitioner needed assistance getting out of bed and needed assistance and reminders with his bathing and medications, these assertions are not supported by Dr. Lim's contemporaneous notes that advised that Petitioner did not need assistance with his ADLs at the time of her assessment. Moreover, Ms. Stone was not Petitioner's caregiver during the entire two-year period prior to Petitioner's institutionalization.

I additionally note that while Petitioner argues that he suffered severe cognitive impairments as a result of his Alzheimer's diagnosis and therefore, met the nursing home level of care because of those impairments, attorney Vincent Marcri, Esq., certified that Petitioner appeared before him and signed the deed to transfer his property to P.B. in August 2019, attesting to Petitioner's competency to voluntarily relinquish his property. See P-12. Accordingly, it is unclear how Petitioner can now state that he qualified for nursing home level of care because of his cognitive deficiencies during the entire two-year period prior to

institutionalization when he was deemed competent in August 2019 in order to transfer his property to P.B.

I further note that even if it was demonstrated that Petitioner needed a nursing home level of care during this period, it is unclear whether P.B. provided or paid for the care that was necessary. In Dr. Lim's January 5, 2018 notes, she stated that Petitioner "will be lo[sing] the friend that stays with him during the day for supervision" and that although P.B. and C.B.'s jobs are flexible, "they cannot be home 24-7." P-4 at 6. Further, Dr. Lim's August 11, 2017 notes provided that Petitioner was left alone for six hours between 12pm and 6pm, which was when Ms. Stone alleged she was employed as a live-in caretaker for Petitioner. Id. at 12. While P.B. employed Ms. Stone and Ms. Pariso, Ms. Stone stated that she ended her employment in February 2019 and Ms. Pariso, who only worked ten hours per week, ended her employment in February 2020. With P.B.'s employment and the admission that "they cannot be home 24-7," it is unclear who was caring for Petitioner during the entire period at issue if a nursing home level of care was necessary.

Accordingly, I FIND that Petitioner has failed to demonstrate that the transfer of his property to P.B. should be exempted pursuant to N.J.A.C. 10:71-4.10(d)4 and therefore, the imposition of a penalty for the transfer of the property for less than fair market value was appropriate. However, it appears that UCBSS failed to properly determine the value of Petitioner's property in this matter. The fair market value of a property is "an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred." N.J.A.C. 10:71-4.10(b)6. Absent a certified appraisal, the value of a resource is considered "the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value)." N.J.A.C. 10:71-4.1(d). The equity value of real property is "the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized

Valuations, less encumbrances, if any. . . ." N.J.A.C. 10:71-4.1(d)1iv.

The tax assessed value of the property when it was sold in August 2019 was $205,100. That amount divided by .8872, which is the Union County assessment ratio for Roselle Park Boro, New Jersey in the State Table of Equalized Valuations, results in a valuation of $231,176.74. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Union County, 2018, http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml. UCBSS determined that the value of Petitioner's property at the time of the sale was $330,752. It is unclear from the record how this valuation was determined. Therefore, I FIND that Petitioner actually transferred his property for $231,176.74 less than fair market value and the penalty imposed is MODIFIED accordingly.

As it relates to the remaining transfers in this matter, the Initial Decision finds that the payments made by P.B and C.B. for services allegedly provided to Petitioner, including $12,500 for house cleaning services between June 28, 2017 and August 13, 2020, $21,000 for siding and a new roof in August 2018, $5,150 for a new driveway on June 12, 2020, and $10,000 in caregiver services from May 2018 to February 2020 should offset the remaining loan balance of $34,451.22 owed by P.B. for the $51,077.33 loan that Petitioner provided to P.B. between February 2016[13] and August 2019. The Initial Decision additionally finds that because the total payment amount of these services exceeded the remaining loan amount by $14,197, the $14,000 transfer from Petitioner's bank account was appropriately an overpayment issued to P.B. I disagree with both of these determinations.

Petitioner has provided no documentation setting forth the original loan and repayment terms. Petitioner allegedly began loaning money to P.B. in February 2016 with the final

[13] The ALJ states that the loans began in August 2015, but P.B. indicated on Petitioner's Medicaid application that the payments began in February 2016. R-2. No bank statements were entered into evidence in this matter. Therefore it is unclear when the alleged loans payments to P.B. began.

payment sometime in August 2019. While Petitioner argues that the payments constituted a loan to open P.B.'s business, no contemporaneous documentation signed by both Petitioner and P.B. supporting such a finding has been provided. Nevertheless, Petitioner is now arguing that services paid by P.B. well after the alleged loan originated should now be considered repayment for the remaining loan balance in order for Petitioner to qualify for institutionalized Medicaid benefits. While Petitioner has provided documentation that these services were paid by P.B. and C.B., Petitioner cannot now claim that the payment for these services were somehow reimbursement for an outstanding loan only because they were paid by P.B. and C.B. and P.B. owed Petitioner a similar amount of money. There is no nexus between the outstanding loan balance and the payment for these services, and no credible evidence has been submitted that shows that Petitioner agreed to the loan being repaid in such a manner rather than in cash payments. Additionally, I note that the payment for the driveway and part of the roofing and siding work took place after Petitioner signed a deed that transferred property to P.B. See checks attached to P-7. Accordingly, I FIND that Petitioner has not demonstrated that the outstanding loan balance of $34,451.22 was repaid and additionally failed to rebut the presumption that the transfer at issue was done for the purposes of qualifying for Medicaid benefits. Moreover, as Petitioner failed to demonstrate that there was a nexus between the payment for the above-referenced services by P.B. and repayment of the outstanding loan amount, I FIND that Petitioner has failed to demonstrate that the $14,000 transfer from Petitioner's account on September 14, 2020 was overpayment for the above-referenced services. I further FIND that Petitioner has failed to rebut the presumption that this $14,000 transfer, that took place only one month before Petitioner applied for Medicaid benefits, was done for the purposes of qualifying for Medicaid benefits.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the ALJ's recommended decision as it relates to all three transfers at issue in this matter. Further, I FIND that Petitioner has failed to rebut the presumption that the transfers

at issue in this matter, which I modified above to total $279,627.96, were made in order to establish Medicaid eligibility, and therefore, the modified penalty period of 782 days is appropriate. I further FIND that Petitioner has failed to establish that the transfer of his property should be exempted, pursuant to N.J.A.C. 10:71-10.7(d)4.

THEREFORE, it is on this 9th day of DECEMBER 2021

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the transfer penalty in this matter is MODIFIED to $279,627.96 or 782 days.

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