



from transfers totaling \$18,683.29 during the look-back period. Petitioner's daughter, N.E.H.,<sup>1</sup> appealed the transfer penalty on Petitioner's behalf.

The Initial Decision upholds the transfer penalty related to the \$18,683.29 in transfers, 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

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<sup>1</sup> The Initial Decision refers to Petitioner's daughter as "N.E.H.," which appears to be the initials of her legal name; however, Petitioner's Medicaid application lists Petitioner's daughter under a name with the initials of D.H. See R-1. Additionally, the request for a hearing in this matter was filed by Petitioner's daughter under the initials D.H. However, for consistency, this Decision will additionally refer to Petitioner's daughter as N.E.H.

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, Morris County conducted a review of Petitioner’s financial documents and identified several transfers that were made for vehicle lease payments between November 1, 2014 and December 31, 2019, totaling 18,683.29. R-3. The vehicle in question was not leased by Petitioner, but was leased and registered under N.E.H.’s name. ID at 2. Petitioner stopped driving in 2014 as a result of her progressing dementia. Ibid. Prior to moving into a nursing facility in November 2019, Petitioner resided with N.E.H., who was responsible for her care, in a single-family home that was jointly-owned by Petitioner and N.E.H.<sup>2</sup> Ibid. During the time that Petitioner resided with N.E.H., N.E.H. testified that Petitioner made the monthly lease payments on N.E.H.’s vehicle because the vehicle was being used for Petitioner’s benefit and because N.E.H. paid the mortgage and other shared household expenses. Ibid. at 3.

However, no documentary evidence was entered into the record showing that an agreement existed between Petitioner and N.E.H. related to the payment of N.E.H.’s vehicle lease and other household expenses. Moreover, based on N.E.H.’s testimony, the ALJ found that the leased vehicle was not used exclusively or even primarily for Petitioner’s benefit. Ibid. Further, as noted by the ALJ, based upon Petitioner’s advancing dementia, it was clear that Petitioner would eventually need a greater level of care and as a result, Petitioner is unable to demonstrate that there was no anticipated need for Medicaid during the time period that Petitioner was paying for N.E.H.’s lease payments. Id. at 5. Additionally, while Petitioner began residing in a nursing facility in November 2019, she continued to pay for the lease payments on N.E.H.’s vehicle until at least December 2019. See R-3. Petitioner was, therefore, continuing to pay for N.E.H.’s vehicle when N.E.H. was no longer directly

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<sup>2</sup> During the five-year look back period, the home was transferred into N.E.H.’s name only. N.E.H. applied for a caregiver child exception related to the transfer of the home, which was approved. ID at 2. Accordingly, Petitioner was not penalized for that transfer.

responsible for either Petitioner's care or transportation. N.E.H.'s testimony alone, thus, falls short of satisfying Petitioner's burden of proof and without a more convincing showing that the lease payments were made exclusively for some other purpose than to establish Medicaid eligibility, the imposed penalty is appropriate.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter, which totaled \$18,683.29, were made in order to establish Medicaid eligibility.

THEREFORE, it is on this 7th day of September 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