



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

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Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

O.G.

PETITIONER,

v.

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ATLANTIC COUNTY BOARD OF
SOCIAL SERVICES,**

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 4377-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter.¹ Procedurally, the time period for the Agency Head to file a Final Decision is August 23,

¹ Petitioner did not file exceptions as instructed by the Initial Decision. The case record contains an emailed letter from Petitioner's POA sent to the ALJ and Atlantic County on May 25, 2021, the day after the Initial Decision was issued. No copy was served on the Medicaid Director as set forth on page six of the Initial Decision.

2021 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's October 2019 application for Medicaid benefits. Petitioner was found eligible October 1, 2020 but subject to a transfer penalty of 1,208 days due to the transfer of \$425,211.34 to her brother by deeded ownership of three properties and a bank account. At the hearing, the valuation of the transferred properties was modified to \$359,298.52 and reduced the penalty to 1,021 days. ID at 3.

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 was represented at the hearing by her brother as her Power of Attorney. Petitioner produced an eight-page affidavit on October 2020 in conjunction with a motion for summary decision. See, *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520 (1995). That motion was denied based on a finding that there were issues of material fact regarding Petitioner's assertions that she was either not the owner of the asset or the percentage attributed to her was incorrect that had to be resolved at a hearing. In an

April 17, 2021 email to the judge, Petitioner's POA affirmatively declined to present Petitioner for testimony at the hearing but relied on the briefs and documents.²

At the time of the transfers in 2014 and 2017 Petitioner had already been diagnosed with multiple sclerosis and was receiving disability. However, during this time Petitioner gained ownership interest in various properties and accounts through transfers originated by her brother and POA or by her own hand. The deeds show that Petitioner owned the properties with her brother as joint tenants with rights of survivorship.

The Initial Decision found that Petitioner had not rebutted the presumption that the transfers were done so as to qualify for Medicaid. The ALJ had previously found that summary judgement was not appropriate as there were genuine issues of material fact that necessitated a hearing. The burden is on Petitioner to rebut the presumption that the transfers were done solely for a reason other than applying for Medicaid. N.J.A.C. 10:71-4.10(j). However, at the hearing, Petitioner offered no testimony.

Rather the deeds filed in Atlantic County demonstrate Petitioner owned the properties in question as a joint tenant with rights of survivorship with her mother and brother See *Gauger v. Gauger*, 73 N.J. 538 (1997) regarding joint tenancy ownership interest. Her transfer of her ownership rights to her brother triggers a transfer penalty that she has the opportunity to rebut. N.J.A.C. 10:71-4.10 (c). Similarly the transfer of funds from her checking account and the removal of her name from the joint account with her brother requires an assessment of a transfer penalty. There is no credible evidence in the record and no testimony was offered to rebut the presumption that these transfers

² The POA stated that Petitioner had declined mentally but provided no medical evidence. In a March 15, 2021 email to the ALJ and Atlantic County, her POA expressed concern "that it could hurt [Petitioner's] own interest if she provides testimony that would be clearly be inconsistent with the existing and verifiable record." After being referred to the OAL guidance regarding hearings, the POA sent an email on April 17, 2021 that Petitioner would not provide testimony.

were done exclusively for a reason other than applying for Medicaid.

Thus, I agree with the Initial Decision's finding that the funds actually transferred equaled \$359,298.52 or a 1,021 day penalty. ID at 3. See Med. Comm. No. 19-07.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision's finding that the penalty should be upheld.

THEREFORE, it is on this ^{20th} day of AUGUST 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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