



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

R.D.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 03168-2021
	:	
AND HEALTH SERVICES AND	:	
	:	
ATLANTIC COUNTY DEPARTMENT	:	
	:	
OF FAMILY AND COMMUNITY	:	
	:	
DEVELOPMENT,	:	
	:	
RESPONDENTS.	:	

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 OAL case file. The Atlantic County Department of Family and Community Development (Atlantic County) filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 27, 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 March 16, 2021, Atlantic County granted Petitioner's

September 2020 Medicaid application with eligibility as of July 26, 2022, as a result of the imposition of a penalty of 571 days due to a transfer of assets in the amount of \$204,446.81. R-1 at 19. The transfers at issue related to four payments by Petitioner's wife, L.D. to her son, R.F., for less than fair market value during the five-year look-back period. R-1 at 19.

The Initial Decision upholds the transfer penalty as it relates to one of the four transfers at issue, as Petitioner failed to rebut the presumption that the transfer was made for the purposes of qualifying for Medicaid. Further, the Initial Decision reverses the transfer penalty as it relates to the remaining three transfers at issue and found that those transfers were not made for the purpose of qualifying for Medicaid benefits but were related to repayments for an alleged 2006 loan from R.F. to L.D. 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 a spouse or 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.

Here, a Medicaid application was filed on Petitioner’s behalf by L.D. on September 3, 2020. R-1 at 2-18. In processing his application, Atlantic County determined that the following transfers occurred during the look-back period: (1) an estate distribution check, dated November 28, 2017, in the amount of \$75,000 that L.D. made payable to R.F.;¹ (2) a personal check, dated November 29, 2017, from R.D. and L.D.’s joint PNC Bank account in the amount of \$9,000 made payable to R.F.; (3) an estate distribution check, dated May 12, 2018, in the amount of \$15,000 that L.D. made payable to R.F.;² and (4) an estate distribution check, dated November 12, 2018, in the amount of \$105,446.81 that L.D. made payable to R.F.³ ID at 3. The total amount of the transferred funds was \$204,446.81. Petitioner alleges that the transferred funds related to repayment from a December 31, 2006 loan provided by R.F. to L.D. in the amount of \$145,000. In support of this assertion, a “Demand Note,” dated December 31, 2006, was provided. P-1. The Demand Note was signed by both L.D. and R.F.; however it was not witnessed, notarized, or dated next to either L.D. or R.F.’s signatures. Ibid. The Demand Note provided that in return for a loan in the amount of \$145,000, from R.F., L.D. would repay the principal amount of the loan plus interest in the amount of six percent per annum at the demand of R.F. Ibid. The Demand Note further

¹ While the check was dated November 28, 2017, the check was not deposited into R.F.’s Haverford Trust Company account until December 13, 2017. R-1 at 21.

² While the check was dated May 15, 2018, the check was not deposited into R.F.’s Haverford Trust Company account until June 1, 2018. Id. at 24.

³ While the check was dated for November 12, 2018, the check was not deposited into R.F.’s Haverford Trust Company account until November 27, 2018. Id. at 26.

stated that “[i]n the event that my sale of premises located at . . . Margate, New Jersey prior to the repayment of the entire sum due and owing, the remaining balance is immediately due and owing.” Ibid. On March 15, 2017, less than three months after the date the Demand Note, L.D. sold her Margate, New Jersey residence and profited \$169,683.73 from the sale.

P-3. L.D. did not use the proceeds from the sale of her residence to pay off the loan, as specifically stipulated in the Demand Note.

At the hearing in this matter, both L.D. and R.F. testified on Petitioner’s behalf. The ALJ noted that L.D. had trouble recalling dates and was confused at times during her testimony. Id. at 4. She acknowledged, however, that she owed R.F. money and she would have paid him back if not for Petitioner’s gambling debts and credit card debt. Id. at 4. L.D. testified that all four of the transfers were used to repay some of the money that she owed R.F. Id. at 4-5. L.D. could not remember where she had gotten the money to repay R.F.; however, when asked about her cousin, she stated that he had died and left her an inheritance. Id. at 5. L.D. additionally testified that she discussed Petitioner’s care with her personal physician, who advised her to apply for Medicaid. Id. at 4. The record is unclear when this conversation occurred; however, in its exceptions to the Initial Decision, Atlantic County stated that L.D. testified that at the time the transfers were made, she was already planning to apply for Medicaid on Petitioner’s behalf.

R.F. testified that he lent L.D. \$145,000 with an interest rate of six percent and that a Demand Note was signed to that effect on December 31, 2006. Ibid. R.F. stated that the loan was not repaid when L.D. sold the Margate, New Jersey residence because Petitioner had generated credit card debt due to a gambling problem and the money from the sale went to pay for Petitioner’s debts and for L.D. to get settled in a new apartment. Ibid. R.F. testified that three of the transfers, the \$75,000 check dated November 28, 2017, the \$15,000 check dated May 15, 2018, and the \$105,446.81 check dated November 12, 2018, were payments towards satisfaction of the principal and accumulated interest on the Demand Note. Ibid. He

create an interest calculation of \$240,700 to give to Atlantic County in support of the appeal. Ibid. (citing P-3). The calculation shows interest in the amount of \$8,700 for the years 2007 through 2017.⁴ P-3. R.F. stated that the \$9,000 transfer made on November 29, 2017 from Petitioner and L.D.'s joint bank account to R.F. was not repayment of the loan. ID at 5. R.F. testified that after he provided the \$145,000 loan to L.D., he continued to give L.D. money but never updated the Demand Note. Ibid. He stated that he did not see the need to update the Demand Note. Id. at 6.

The Initial Decision found that Petitioner had failed to rebut the presumption that the \$9,000 transfer on November 29, 2017 was made for the purpose of obtaining Medicaid benefits. I agree. No documentary evidence was provided that shows the purpose of this payment to R.F. and therefore, Petitioner has failed to demonstrate that the transfer was exclusively for some other purpose than to qualify for Medicaid. Accordingly, I FIND that Petitioner was appropriately penalized for this transfer.

The Initial Decision additionally found that Petitioner had rebutted the presumption that the remaining three transfers, the \$75,000 check dated November 28, 2017, the \$15,000 check dated May 15, 2018, and the \$105,446.81 check dated November 12, 2018, were made for the purposes of obtaining Medicaid benefits and that the transfers were made to repay R.F. for the \$145,000 loan entered into between R.F. and L.D. on December 31, 2006. I disagree. The only documentary evidence provided to support the loan origination is a

⁴ I note that there is nothing in the record to show the method that R.F. used to calculate the interest on the principal balance and how he applied the alleged payments to the outstanding principal and interest balance. However, the interest calculation provided does not compound the accumulated interest with the unpaid principal, and the interest calculation provided does not show any of the payments allegedly made on the loan balance. Although L.D. allegedly made a payment of \$75,000 on November 28, 2017 to R.F. on the loan balance, R.F.'s interest calculation for 2017 does not account for this payment and instead, charges the same amount of interest, \$8,700, as he charged for the previous ten years where no payments were made on the loan. See P-3. Moreover, no interest was calculated for 2018, even though R.F. did not receive any alleged payments until May 12, 2018 and November 12, 2018, respectively. Ibid. Further, no interest payments were calculated for 2019 or 2020, even though R.F. claims that the loan still has not been fully repaid. Ibid.

Demand Note, which is not witnessed or notarized. No credible, documentary evidence, including bank statements or deposit slips, were provided to show that L.D. actually received the \$145,000 that was allegedly loaned to her by R.F. See E.M. v. Bergen County Board of Social Services, HMA 15670-13, Final Agency Decision (July 8, 2014) (finding that the transfer penalty imposed was appropriate and that while a promissory note was presented showing an alleged loan, no documentation was provided to show that the petitioner actually received the funds allegedly loaned to her). Moreover, the specific repayment terms of the Demand Note provided that L.D. would repay the alleged loan at the time that her Margate, New Jersey residence was sold. L.D. sold her Margate, New Jersey residence less than three months after the date of the Demand Note and she profited \$169,683.73 from the sale. P-3. However, she failed to repay the alleged loan at that time, negating the explicit repayment terms set forth in the Demand Note. See J.P. v. Division of Med. Assistance & Health Servs., 2014 N.J. Super. Unpub. Lexis 1367 (June 11, 2014) (upholding DMAHS's determination that the transfer penalty was appropriate for, among other reasons, that the petitioner and her daughters failed to abide by the specific terms of an alleged loan agreement with her daughters that required her to repay the alleged loan when she sold her house). R.F. then failed to make a demand for repayment, even though L.D. failed to abide by the terms of the Demand Note, and allowed the alleged loan to remain outstanding for over ten years prior to the transfers taking place. While L.D. and R.F. testified that Petitioner had significant gambling and credit card debt and the money from the sale of the Margate, New Jersey residence was used to pay for said debt, no documentary evidence was supplied by Petitioner to support these assertions. Thus, even though L.D. possessed the funds to repay the loan as early as March 2007, L.D. waited until December 2017, when L.D. was planning to apply for Medicaid benefits on Petitioner's behalf, to make any payments on the alleged loan balance.

Even though the explicit repayment terms of the Demand Note were disregarded by both parties upon the sale of L.D.'s Margate, New Jersey residence, R.F. failed to modify the agreement to set out new payment terms and failed to demand payment from R.F. at any point after the Demand Note was entered into. As noted in Atlantic County's exceptions to the Initial Decision, R.F. testified that he was unaware if he was going to be repaid for the alleged loan and was unsure whether the loan would ever be repaid in full. While R.F. provided an interest calculation to Atlantic County in support of this appeal, the interest calculation does not take into account any of the three alleged payments on the loan balance, which would have lowered both the principal and interest due on the alleged loan, and appears that the interest calculation was only drafted in response to the current appeal. See footnote 1 above. Thus, it appears that R.F. had not been monitoring the loan balance in the years following the alleged loan until the transfers were penalized, supporting Atlantic County's position that the alleged loan was never intended to be repaid. Because the parties to the agreement disregarded the explicit repayment terms of the Demand Note and it appears that the alleged loan was never expected to be repaid as a result of R.F.'s failure to demand payment at any point after the Demand Note was entered into, I concur with Atlantic County's assessment that the alleged loan was not a bonafide loan and therefore, the transfers at issue cannot be found to be repayment for that alleged loan.

Moreover, I note that only eight days after the last transfer of \$105,446.81 was deposited into R.F.'s Haverford Trust Company account, R.F. set up automatic monthly transfers from that same Haverford Trust Company account to Petitioner and L.D.'s bank account in amounts ranging from \$1,000 to \$3,000. R-1 at 31 and 32. Effectively, R.F. and L.D. created a constructive trust through the transfers at issue, and R.F. began to transfer the same funds that L.D. allegedly paid R.F. on the loan balance back to L.D. almost immediately after the third transfer was completed.

Accordingly, I FIND that Petitioner has failed to present sufficient, credible documentary evidence to support a finding that the three remaining transfers, totaling \$195,446.81, were made exclusively for some other purpose than to qualify for Medicaid, and therefore, these transfers were properly penalized.

Based upon my review of the record, I hereby ADOPT the ALJ's recommended decision as it relates to the \$9,000 transfer from Petitioner and L.D.'s bank account to R.F. on November 29, 2017. Further, I hereby REVERSE the ALJ's recommended decision as it relates to the remaining three transfers at issue, the \$75,000 check dated November 28, 2017, the \$15,000 check dated May 15, 2018, and the \$105,446.81 check dated November 12, 2018. Petitioner has failed rebut the presumption that the four transfers at issue in this matter were done for the purpose of qualifying for Medicaid.

THEREFORE, it is on this 17th day of DECEMBER 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