

\$296,350. Another application was filed in March 2019 which was denied due to the failure to provide bank records for funds allegedly loaned to her. ID at 2. Both applications were appealed.

During the pre-hearing and hearing, Petitioner provided new information regarding the valuation of the property, which increased the transfer amount to \$460,000, reflecting the 2015 appraised value of the property, and the length of the penalty to 1,337 days. All issues regarding the two applications which were consolidated as well as the new penalty amount were resolved in the Initial Decision.

At issue is the transfer of Petitioner's home in 2015 to her grandson, an attorney who invested in rental real estate. ID at 5. The proffer was that the grandson had been lending money to Petitioner and her husband since the late 1990s and that a promissory note executed in 2003 memorialized the terms of the debt. That document reflected that the grandson had already lent around \$50,000 to Petitioner and her husband and would be lending more for a total of \$200,000. P-1. The terms of the repayment were based on a rate of 10% compound interest and would occur upon sale of the property, the death or incapacitation of either member of the couple or upon transfer of the property to the grandson. P-1.

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).

For the reasons that follow, I hereby ADOPT the Initial Decision in its entirety and incorporate the same by reference. To that end, I FIND that the record supports that Petitioner had a due and owing obligation to pay \$50,000 based on the recitation of the prior transfers of funds memorialized in the 2003 promissory note which was prepared by another attorney. That note sets forth a compound interest rate of 10% that would have increased Petitioner’s debit to \$155,317.76 at the time the property was transferred. ID at 27.

Petitioner’s contention that she received additional funds that would increase her debt to her grandson is simply not supported by credible and convincing documentary evidence to support Petitioner’s claims. ID at 22 – 24. I concur with the detailed analysis contained in the Initial Decision that recounts the testimony from Petitioner’s grandson and the documents he produced to support his claim that additional funds were lent to Petitioner and her husband. The unreliability, the irregularities and the discrepancies of Petitioner’s proofs is evident in the use of handwritten calendar entries; the production of checks that appear to have no relation to Petitioner and the lack of cancelled checks and statements which fail to demonstrate that additional funds were lent. ID at 22. The finding that these documents – or the lack thereof- were “confusing and unconvincing” is supported by the record. For example the few checks that were produced would normally

be considered proof of the exchange of funds. Yet the check provided by Petitioner's grandson were a single photo-copied page of one complete and five partial images of check written in February 2004 through September 2005 that he testified he found in Petitioner's records. ID at 7 and P-1(3). The ALJ found this document perplexing and noted "[i]f in fact the petitioner cashed or deposited those checks, then she would not have had all of the checks to photocopy at once. Also, the composition of the copied image leads one to reasonably believe that the checks were photocopied at the same time. No one check image overlaid the other. The first four checks are aligned exactly in the image even though they were written, and presumably tendered, over the course of two years." ID at 23. If those checks were tendered for payment, the bank, not Petitioner, would retain possession of the check making it impossible for them to have been copied that way. As the ALJ continued, [t]hose unexplained inconsistencies in the proofs coupled with the irregular accounting system for memorialization or reconstruction of the payments, made their weight less than convincing. All of these issues raised discrepancies that were never resolved by the evidence or testimony." ID at 23.

Based on my review of the record and for the reasons set forth in the Initial Decision, the transfer of Petitioner's home valued at \$460,000 resulted in the uncompensated transfer of \$304,682.24 which represents the value of the home reduced by \$155,317.76 secured by the promissory note. Using the penalty divisor of \$343.85 and Petitioner's established eligibility date of date of August 1, 2018, renders Petitioner ineligible for 886 days through January 3, 2021. Medicaid Communication No. 18-06. Thus, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 3rd day of AUGUST 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED; and

That the transfer penalty as set forth above is upheld.



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