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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.M.	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE	:	**OAL DKT. NO. HMA 8087-2020**
AND HEALTH SERVICES AND	:	
ATLANTIC COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
RESPONDENTS.	:	

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. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is September 20, 2021 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's

December 2019 application for Medicaid benefits based on the transfer of two parcels of real property. Petitioner was found eligible February 1, 2020 but subject to a transfer penalty of 498 days due to the transfer of the marital home to his daughter and son-in-law in 2010 and the transfer of a vacant lot in October 2016. Petitioner did not contest the penalty assessed to the 2016 transfer of the vacant lot but claimed that the 2010 transfer was not done in contemplation of qualifying for Medicaid. The Initial Decision agreed that Petitioner had rebutted the presumption that the 2010 transfer was to qualify for Medicaid and upheld the uncontested transfer of $5,199.81. For the reasons that follow, I hereby REVERSE the Initial Decision.

A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "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 circumstances surrounding the transfer are reviewed including but not limited to the purpose for transferring the asset; the means of and plans for, support after the transfer;

and the relationship, if any, to the person(s) to whom the asset was transferred. 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. It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility.[1]

Additionally, each individual has a baseline lookback period regardless of how many applications are filed. The federal government has directed states to calculate the lookback period based upon the first application for Medicaid whether or not that application is sucessful. See State Medicaid Manual §3258.4(C) stating "each individual has only one look-back date, regardless of the number of periods of institutionalization, applications for Medicaid, periods of eligibility, or transfers of assets."

The factual findings in this matter are predicated on hearsay namely the testimony from Petitioner's family. A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the residuum rule, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." I FIND that there is not a residuum of legal and competent evidence in the record to support a finding that Petitioner rebutted the presumption that the transfers were done so as to qualify for Medicaid. See Weston v. State of New Jersey, 60 N.J. 36, 51-2 (N.J. 1972).

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[1] There are certain exceptions to the transfer rules under which a penalty will not be imposed when the home is being transferred to a spouse, a sibling or a child. The last two exceptions are only applicable under certain circumstances. N.J.A.C. 10:71-4.10 (d). Petitioner did not claim that any of those exceptions apply to this case.

Petitioner suffered a stroke in 2011 at age sixty-three after he had retired from his job. His family claimed he had no illness prior to his retirement or stroke. R-2. In a post-hearing brief, Petitioner's counsel noted that the testimony from his family recounted that, after recovering from the 2011 stroke, he had no health concerns until 2019 when he began to decline. Pet. Brief at 5-6. There is no medical documentation or other impartial evidence to support this finding. In fact, Petitioner has conceded that the 2016 deed of the vacant land was done in contemplation of Medicaid eligibility and subject to penalty. ID at 5. Thus, Petitioner's claim that there was no onset of disability until 2019 is belied by his position on the 2016 transfer and the lack of any documentation of his health at the time of the 2010 transfer.

The documents surrounding the 2010 transfer of the home to Petitioner's daughter do not align with the testimony from Petitioner's family. Indeed, the Initial Decision omits mentioning that the first publically filed document is the June 2008 mortgage in which Petitioner and his wife execute a note for $120,000 in favor of their daughter and son-in-law. P-4. By the terms of the June 2008 note, the funds were to be re-paid when the property was sold or at the death of petitioner and wife or if they ceased to live in the property. P-4. It is unclear what the parties intended by repayment being triggered when Petitioner and his wife "ceased living in the property" or where they planned to live.

No financial documents were produced to demonstrate that Petitioner and his wife received $120,000 as reflected in the note and, while a prior mortgage held by a commercial lender was discharged in July 2008, the source of funds used to discharge that mortgage were not provided. Petitioner's post-hearing brief states that Petitioner's son-in-law testified that the $120,000 note "was intended to cover both the payoff of the outstanding mortgage as well as other costs and fees that he incurred doing the refinance

against his own house and completing the transaction." Pet. Brief at 5. Using $95,000 as the payoff amount of the outstanding mortgage, those alleged costs and fees amounted to $25,000 and are unsupported by the record.

With the backdrop of the 2008 mortgage, the record contains no competent evidence for the basis for wholesale transfer of the home to the couple's daughter in February 2010 some eighteen months after the note was signed. P-5. Additionally, while both the daughter and her husband were the lenders on the note, only the daughter received title of the home. The record does not show whether the 2008 note was discharged with the land records at Atlantic County nor is there evidence on how the couple intended to live in a home they no longer owned.

In explaining why the home was transferred to her, Petitioner's daughter and spouse stated that they provided financial support for Petitioner and his wife and paid the property taxes since the early 2000's. ID at 3. Yet the only documentation to support this claim are quarterly checks for property taxes. The earliest check was written in April 2016. P-6. There is no contemporaneous evidence to support the finding that "the daughter and son-in-law were already paying the bulk of the expenses on the home" when the property was deeded to Petitioner's daughter in 2010.[2] ID at 3.

I agree that the equity value of the transferred property is the correct basis to impose a transfer penalty. However, Petitioner has failed to demonstrate that the true value exchanged under the June 2008 note. While the commercial note was discharged in July 2008, the source and the amount of funds of the payoff was not provided.

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[2] The daughter and son-in-law also claimed the transfer to the daughter was done since they "were considering using the . . . property as their permanent residence in order to enroll their children in the local school district." ID at 3. Again, no evidence was produced that they changed their residence and enrolled their children in the school district at that time.

Assuming that the discharge was funded by Petitioner's daughter and son-in-law and then secure by the new note, the equity in the home at the time of the February 2010 deed amounted to $83,299 ($178,299 - $95,000) which would have ended the penalty on September 19, 2020. Since this amount does not include the uncontested transfer of $5,199.81 and since Petitioner passed away earlier in September, the equity value does not alter the net result that Petitioner was not eligible for nursing home benefits prior to his passing.

As mentioned above, it is Petitioner's burden to demonstrate that the transfer was done solely for a reason other than qualifying for Medicaid. The documents in the record do not support a finding that Petitioner met that burden and, thus, I hereby REVERSE the Initial Decision and reinstate the penalty.

THEREFORE, it is on this 19th day of SEPTEMBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED.

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