

The matter arises from the Middlesex County Board of Social Services' (MCBSS) August 28, 2020 notice of eligibility and four-day penalty due to transfers totaling \$1,649.40. 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.¹ 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. 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's sister, E.W., established a qualified income trust for Petitioner. E.W. owned a life insurance policy for which Petitioner was the insured. It's monthly premium was \$117.10. E.W. used funds from the QIT to pay the monthly premium. Over a fourteen-month

¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

period, the payments totaled \$1,639.40. Med-Com 14-15 provides that the "income deposited in the QIT can only be used for the specific Post-eligibility Treatment of Income and to pay for the Medicaid beneficiary's cost share. I agree with the ALJ that while some expenses may be paid for with funds from the QIT, life insurance premiums are not among them. Based on my review of the record and for the reasons set forth above, I hereby ADOPT the Initial Decision upholding the transfer penalty.

THEREFORE, it is on this^{15th} day of SEPTEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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