



The matter arises regarding the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated September 29, 2020, Hudson County informed Petitioner that she had been found eligible as of November 1, 2019 but was subject to a transfer penalty until 2022 for funds transferred to her son from a Charles Schwab account. Hudson County characterized the transfers as being claimed for compensation for care and services. Petitioner's son filed an appeal.

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).

The Initial Decision states that Hudson County the penalty amount was rescinded but for "a transfer from a Schwab account, claiming it is an asset to compensate a relative for care/services provided for free at the time of delivery." ID at 1. The penalty amount was purportedly reduced to \$61,098.62. ID at 2.

Petitioner's son testified that his mother moved in with him in 2016. Id at 2. While the Medicaid look back period would begin 2014, the expenses in the report occurred in 2018 and 2019. The Schwab statements indicates the account was opened in January

2018 and the transfers commenced soon after.

The record does not reflect any documentation of a rescission of the penalty. The only exhibits are described being the "Department package" from Hudson County. There are no exhibits listed for Petitioner. ID at 6. Yet the OAL file only contains documents such as tax filings, financial statements from the Charles Schwab account and an analysis dated October 22, 2020 prepared by Petitioner's son. Nothing in the record seems to be documents or a package from Hudson County.

In reviewing the documents that are in the record, I FIND that there needs to be further development of what was originally identified as a transfer penalty and if and why Hudson County took additional action on the penalty amount. To the extent the aforementioned analysis is correct, the transfer amount was \$295,125.48 which mathematically comports with the length of penalty reflected in the September 29, 2020 notice. The son's analysis breaks up the transfer penalty into five categories "(a) Internal Charles Schwab transaction" for \$156,096.40; "(b) Room and Board charges" for \$70,728.70; "(c) monthly payments on Credit Card" for \$24,747.77; "(d) Expenses on behalf of" Petitioner for \$6,880; and "(e) Home care attendant payroll" for \$36,672.61. None of these categories equal the reduced penalty amount.

The Initial Decision found that \$61,098.62 of the transferred assets were properly assessed a penalty as there was no agreement to pay room and board. ID at 4. While I concur with the law that should be applied, I cannot discern how that amount was calculated. According to Petitioner's son, \$70,728.70 was transferred to him as room and board charges. Thus, the Initial Decision is REVERSED and REMANDED for further findings regarding the amount Petitioner claims was for room and board.

The matter is also REMANDED as the record does not show how or why the

penalty was reduced to \$61,098.62. The analysis by Petitioner's son does reflect two areas that might have been properly reduced but there is not enough documentation to make any findings. If \$156,096.40 of the penalty stems from transactions marked as bank sweeps, that amount would not be a transfer since the bank sweep remains part of the investment account as shown by the breakdown of the holdings. Additionally, if \$36,372.61 of the transferred assets represents payment for Petitioner's home care workers, that amount could be for fair market value. The case file does appear to have back up of wage filings for the two workers.

That leaves two additional areas – the cost of a home generator and \$24,747.77 transferred to Petitioner's funds for credit card charges. Both of these areas need further development as the record does not reflect why they were removed from penalty. I note that the credit card expenses listed by Petitioner's son contain high dollar charges he reimbursed from the Schwab account. For example, the first listed charge in April 2018 is \$1,370.12 for a wine store. There are multiple restaurant charges including \$722.92 on June 28, 2018, \$471.57 on May 12, 2018 and \$413.44 on August 26, 2018. Petitioner also paid an \$8,530 charge from a portrait studio. These charges would need to be reviewed under the transfer regulations on remand.

Thus, for the reasons set forth above, I hereby REVERSE the Initial Decision in so far as the record does not reflect the reduction of the penalty and REMAND the matter for further findings and evidence on the reduction of the penalty including the production of the Department package.

THEREFORE, it is on this <sup>6th</sup> day of .MAY 2021,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED.



---

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