

transfer penalty on Petitioner's behalf, claiming that the Petitioner paid for her living expenses in cash, and the withdrawals that were the basis of the penalty, resulted from Petitioner withdrawing her monthly social security and pension deposits to pay her bills.

The Initial Decision reverses the transfer penalty and found that facts presented on Petitioner's behalf rebutted the presumption that the transfer was done for the purpose of qualifying for Medicaid. N.J.A.C. 10:71-4.10(j). 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 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, the Administrative Law Judge (ALJ) found that after the application was submitted on Petitioner's behalf, verification request letters were sent by the Morris County Office of Temporary Assistance (CWA) on April 1, 2020, April 21, 2020, and June 10, 2020. R-1 at 7-12. The June 10, 2020 verification request letter set forth seventeen separate withdrawals from Petitioner's savings account totaling \$37,371.¹ Id. at 11-12. The CWA additionally provided bank account statements from Petitioner's savings account showing withdrawals made on February 3, 2020, June 3, 2019, March 1, 2019, February 1, 2019, September 4, 2018, June 1, 2018, December 1, 2017, September 1, 2017, July 5, 2017, April 3, 2017, January 3, 2017, October 3, 2016, July 1, 2016, April 1, 2016, January 4, 2016, August 3, 2015, and May 1, 2015. Id. at 17-33. Each withdrawal at issue was in an amount between \$2,289 and \$2,242 and occurred either the day of or within a few days after the deposit of both Petitioner's pension and Social Security payments.² Ibid. The withdrawals left approximately \$5 in Petitioner's savings account during the months at issue. Ibid.

H.S. and his wife testified at the hearing on Petitioner's behalf and stated that Petitioner paid for everything in cash and that it was her practice to withdraw her pension deposit, in the amount of \$935, and her Social Security deposit, in the amount of \$1,307, from her bank account each month. Id. at 2. As found by the ALJ, this testimony conforms to the proofs presented by the CWA in Exhibit R-1, as detailed above. Moreover, H.S., his wife, and his sister produced receipts of regular bills where the Petitioner paid in cash or

¹ The June 10, 2020 letter from the CWA actually requested verification of eighteen withdrawal transactions totaling \$39,565; however, the withdrawal from January 3, 2017 in the amount of \$2,289 appears to be a duplicate. The "Transfer of Resources Worksheet" and the bank statements provided only lists one withdrawal for that date. R-1 at 13 and 27. Further, the withdrawal amount of \$2,196 from June 1, 2018 appears to be an error as well, as the "Transfer of Resources Worksheet" shows the withdrawal amount to be \$2,191, which matches the bank statements provided from the Petitioner's account. R-1 at 13 and 22. With these corrections, the total amount of the withdrawals equals \$37,371, which is the total amount that the CWA found to support the imposed penalty.

² Based upon the statements provided, it appears that Petitioner's pension deposit was made on the first of the months at issue and Petitioner's Social Security deposit was made between the first and third of the months at issue.

money order, including utility bills, vet bills, dog groomer bills, and car lease payments. P-1 at 2-23.

H.S. and his wife additionally testified that Petitioner did not use a debit card, and that the bank personnel knew Petitioner and confirmed this pattern to them. ID at 2-3. Pursuant to 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." The ALJ found that while hearsay, there is a residuum of competent testimonial and documentary evidence in the record to support the statements. I concur.

Further, H.S. testified that Petitioner never gave gifts to her family members and that H.S. and his sister would occasionally give money to Petitioner to cover her bills. ID at 3. H.S. additionally testified that when Petitioner was taken to the hospital as a result of her car accident in early 2020, the staff there reported that Petitioner has approximately \$1,500 in cash on her person. Ibid. H.S. supported this statement by providing a police report, dated April 17, 2020, showing that the \$1,500 was reported by a social worker at Morristown Medical Center but the money was not documented by the facility where Petitioner was transferred after being discharged from the hospital. P-1 at 1.

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that the penalty assessed to Petitioner be reversed. The documentary and testimonial evidence in the record, as set forth above, support a finding that it was a pattern of behavior for Petitioner to withdraw her retirement funds each month, leaving approximately \$5 in her savings account. Accordingly, the documentary and testimonial evidence in the record also support a finding that the transfers at issue in this matter, totaling \$37,371, were not done for the purpose of qualifying for Medicaid and were used by Petitioner for her monthly living expenses.

THEREFORE, it is on this 25th day of MARCH 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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