

Petitioners' Designated Authorized Representative (DAR) in October 2019 of numerous withdrawals from his account, Atlantic County imposed a penalty based on \$63,636.86 in transfers for less than fair market value. Petitioner's DAR appealed the transfer penalty.

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). 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).

In 2012 Petitioner was involved in a motor vehicle accident that rendered him disabled. In January 2015 he was found to be disabled by Social Security and received a retroactive lump sum benefit of over \$14,000. R-1 at 41. At some point he moved in with his sister. In March of 2019 he entered the nursing facility after a brief stay in the hospital. ID at 6.

In the review of the June 2019 application, Atlantic County noted several large withdrawals from Petitioner's bank account during the look back period and requested more information. Petitioner's DAR apparently sent the request for information to Petitioner's sister and POA, who responded with a letter dated November 10, 2019. R-1 at 38. Other than a contract for a \$10,000 spa, no receipts were provided. R-1 at 27. Instead, Petitioner's sister

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).

recounted how she paid herself back from his account for various items including \$10,000 in October 2015 which she claimed she paid for his expenses because he had no income and had “waited until he finally got paid retroactively and sold his home to repay” herself. R-1 at 39. Atlantic County found the statement insufficient to rebut the presumption and imposed the penalty.

At the hearing, Petitioner’s POA testified largely in concert with her prior statements but provided no additional documentation about the transfers. There was additional testimony about smaller charges with the account’s debit card for food but those transactions were not part of the penalty. As Atlantic County mentioned, it recognized that transactions such as grocery shopping, CVS and convenience stores were not part of the transfer as they encompassed expenses of daily living. It was the large withdrawals or amounts payable for services that did not related to Petitioner’s benefit that were included in the penalty amount. Nothing was presented at the hearing to demonstrate those transactions were for fair market value for Petitioner’s benefits.

The contention that the withdrawals were to compensate Petitioner’s sister for prior expenses are not supported by any receipts. Additionally, while Petitioner may have not had any income prior to January 2015, the bank statements show he had resources available to pay for his care. The earliest bank records in the file show that in January 2015, the month in which he began receiving Social Security, Petitioner had over \$30,000 in his bank account. R-1 at 41. It appears that the home might have been sold later in 2015 as evidenced by the balance jumping to over \$80,000 in May 2015. It is that statement that also shows the account was retitled to be a representative payee account. R-1 at 35.

The Initial Decision upholds the transfer penalty. Petitioner’s argument that the traumatic onset of disability occurred in 2019 is unfounded. Rather it was Petitioner’s accident in 2012 that was the onset of the disability as determined by Social Security. I note that the bank statements from 2015 reflect that Petitioner’s sister served as his “rep payee.”

That role is specific to Social Security and requires documentation of how the benefits were spent. See 20 C.F.R. §§ 416.635 and 416.665. At minimum, since 2015, Petitioner's sister should have been aware of the need for spending documentation for Social Security purposes. Nothing was provided at the hearing to buttress Petitioner's prior statements about the transfers.

Similarly, nothing was presented to support Petitioner's allegation that some of the transfers were to family members for care. ID at 11-12. The regulations provide that care and services provided for free are presumed to have been delivered without compensation. N.J.A.C. 10:71-4.10(b)6.ii. There needs to be a pre-existing written agreement and any payment must be based on fair market rate.

In exceptions, counsel for the nursing home cites to N.J.A.C. 10:71-4.10(j) to argue that there were "mandatory investigative steps" that Atlantic County needed to do with regard to rebutting the transfer penalty. The regulation clearly states the burden to rebut the presumptions lies with the applicant. Petitioner was giving the opportunity to rebut the presumption that the transfers were done to qualify for Medicaid and failed to meet that burden. The regulations states that the applicant's statement and documents will be in the case record and the record contains the two statements from Petitioner's sister who functioned as his POA and representative payee. There is no affirmative duty for Atlantic County to complete "a full investigation" as argued by counsel. The other points raised by counsel are likewise not relevant and disposed of in the Initial Decision.

In the course of preparing for the hearing, Atlantic County noted other expenses in the record that were not part of the initial penalty assessment. One amounted to over \$4,600 paid to a catering hall and the other was a \$924.71 charge from an equestrian store. R-1 at 1. To that end, Atlantic County should issue a new transfer notice for those expenses. Also, further review of the record may be warranted as there is another charge from the same equestrian store as well as electronic charges Coachella tickets and for merchants in

California. See R-1 at 18, 28 and 32. Should that review warrant the imposition of a penalty; Petitioner will be afforded the opportunity to provide statements and documentation on these charges.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision finding that Petitioner had failed to rebut the presumption that the \$63,636.86 in transfers were done for a purpose other than qualifying for Medicaid. There is no competent evidence that the expenses and transfers from Petitioner's account were for fair market value. I concur that the penalty was properly imposed.

THEREFORE, it is on this 9th day of FEBRUARY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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