



of Petitioner's property (the property) for \$122,495 less than fair market value and a gift to Petitioner's daughter, F.S. in the amount of \$6,004.91 during the look-back period. F.S. appealed the transfer penalty on Petitioner's behalf.

The Initial Decision reverses the transfer penalty related to the property and upholds the transfer penalty related to the \$6,004.91 gift, as Petitioner did not rebut the presumption that the latter transfer was done for the purpose of qualifying for Medicaid. N.J.A.C. 10:71-4.10(j). Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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.

The fair market value of a property is “an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred.” N.J.A.C. 10:71-4.10(b)6. Absent a certified appraisal, the value of a resource is considered “the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value).” N.J.A.C. 10:71-4.1(d). The equity value of real property is “the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any. . . .” N.J.A.C. 10:71-4.1(d)1iv.

Here, BCBSS determined that the fair market value of the property was \$157,495, which reflected the equity value of the property at the time of its sale in April 2019, pursuant to N.J.A.C. 10:71-4.1(d)1iv.<sup>1</sup> Because the property sold for only \$35,000, BCBSS assessed a transfer of assets in the amount of \$122,495. R-A. However, the record in this matter supports a finding that property was in very bad condition at the time it was sold. The listing agent for the property, Kathleen Hansbury, testified that the property’s “condition was deplorable,” and she determined that \$40,000 was the fair market value of the property.<sup>2</sup> Id. at 4-5. She stated that the roof leaked, the flashing around the chimney needed repair, there

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<sup>1</sup> The tax assessed value of the property when it was sold in April 2019 was \$157,400. That amount divided by .9994, which is the Burlington County assessment ratio for Lumberton, New Jersey in the State Table of Equalized Valuations, results in an equity value of \$157,495. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Burlington County, 2018, <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.

<sup>2</sup> I note that Ms. Hansbury is a real estate agent and not a certified appraiser. Therefore, she cannot assess the fair market value of the property. Only a certified appraiser can make such an assessment. While the listing price of \$40,000 was closely akin to the valuation determined by Certified Real Estate Appraiser, Michael Broccolieri, Mr. Hanbury’s assessment, thus, cannot be viewed as the fair market value of the property in this matter.

was a hole in the kitchen floor, abandoned cats used the basement as a litterbox, the second-floor ceiling was collapsing and filled with mold, a third bedroom was also filled with mold, and sewage pipes from the bathroom dumped sewage into the basement because they were not properly connected. Ibid.

In May 2020, F.S. hired Certified Real Estate Appraiser, Michael Bruccoliere to conduct a retroactive appraisal of the property. Ibid. at 5. As part of his appraisal of the property, Mr. Bruccoliere looked at the Multiple Listing Service (MLS) photos, interviewed F.S., reviewed details from the listing agent, conducted a drive-by of the property, spoke with the new owner and neighbor, and looked at comparable homes in the immediate area. ID at 5. Based upon his appraisal, Mr. Bruccoliere assessed the value of the property at \$38,000 at the time of its sale in April 2019. Id. at 5 and P-1.

Based upon Mr. Bruccoliere assessment of the property, I concur with the Administrative Law Judge (ALJ) that the value of the property at the time of its sale was approximately \$38,000. At the time of its sale, the price that the property could reasonably be expected to sell for on an open market was not \$157,496, as determined by BCBSS, but was, at most, \$38,000. Moreover, the record supports a finding that the property was sold close to the value determined by Mr. Bruccoliere in an arm's length transaction to a third party that had no familial or other relation to Petitioner or her F.S. ID at 12. After multiple showings, only one offer of \$35,000 was presented, which was \$5,000 lower than the MLS listing price and \$3,000 lower than the assessment presented by Mr. Bruccoliere. ID at 12. Accordingly, I FIND that the Petitioner has rebutted the presumption that the property was sold at less than fair market value in order was to establish Medicaid eligibility.

As it relates to the \$6,004.91 gift at issue, F.S. testified that the money was intended to compensate her for the services that she provided to Petitioner. Ibid. at 4. However, F.S. testified that even though she took Petitioner to the bank to withdraw the funds, F.S. did not receive the money. Ibid. F.S. stated that believed that her brother, who has substance abuse

issues, may have stolen the money. Ibid. However, F.S. failed to provide any evidence, such as a police report for the alleged stolen money, to support that contention.

Moreover, F.S. admitted that the money was intended to be given to her in exchange for helping and/or taking care of Petitioner over the years. N.J.A.C. 10:71-7.10(b)6ii provides that “[i]n regard to transfers intended to compensate in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation.” However, this “presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of care or services indicating the type and terms of compensation [and] the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community.” N.J.A.C. 10:71-7.10(b)6ii. Thus, Petitioner bears the burden to demonstrate through credible documentary evidence that an agreement establishing the services and compensation existed prior to the services being rendered. In addition, the Petitioner must demonstrate the types of services provided and the terms of compensation, including a demonstration that the compensation for the rendered services was equal to the prevailing rates for similar services. In the present matter, F.S., on Petitioner’s behalf, failed to present any documentary evidence to show that there was an expectation that F.S. would provide services for Petitioner and that Petitioner would compensate F.S. for said services. Accordingly, I FIND that Petitioner has failed to rebut the presumption that the \$6,004.91 gift to F.S. was made in order to establish Medicaid eligibility.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ’s recommended decision and FIND that Petitioner successfully rebutted the presumption that the property was sold for less than fair market value in order to qualify for Medicaid. I additionally FIND that Petitioner failed to rebut the presumption that the \$6,004.91 gift to F.S. was made in order to qualify for Medicaid. With the reduction of the

transferred amount to \$6,004.91, Petitioner is subject to a penalty of seventeen days. See  
Med. Comm. No. 19-07.

THEREFORE, it is on this 24<sup>th</sup> day of JUNE 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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