



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

V.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MORRIS COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 2311-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is November 26, 2021 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's

application filed in August 2020. Petitioner, who had been diagnosed with multiple sclerosis, was found eligible May 1, 2020 with a transfer penalty of 349 days due to the transfer of \$124,931.94 for less than fair market value. Petitioner appealed the 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. 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).

Petitioner's husband testified at the hearing regarding the transferred amounts. The transfers can be separated into four groups. The first group amounted to transfers of \$59,416.94 to the couple's daughter as Petitioner's needs were increasing. That amount was not contested and remains part of the penalty. ID at 4.

The second group of transfers consists of 49 payments of \$750 for a total of \$36,750. Petitioner provided documentation that these transfers represented a loan he took out in 2009. The ALJ determined that there was a binding legal obligation for these payments and that no penalty should apply to this amount. I concur. The loan agreement is a valid agreement setting forth the terms of repayment and secured by a mortgage note. P-3. The payments totaling \$36,750 were made under the terms of that agreement

and should be removed from the transfer penalty.

The third group of transfers totaled \$25,758 comprising nine withdrawals either via cash or checks written out to cash. The withdrawals range from \$2,165 to \$4,000. ID at 5 and R-2. Petitioner's husband stated these withdrawals were "moved to another checking account from which he paid monthly living expenses." ID at 5. While Petitioner presented spreadsheet of living expenses, I do not see any documentation that the funds were moved to another checking account. Moreover, the record shows there were other funds withdrawn during the same months as well as electronic transfers or debits reflecting monthly living expenses. R-4. These withdrawals are not tied to any discernable expense. Thus, I agree they should remain in the penalty calculation.

The fourth group of transfers consist of twelve transfers of \$250 from a joint account Petitioner's husband established with his daughter when she was a minor. The transfers occurred in 2015 and 2020 with a singular transfer in 2016. Petitioner husband claims that the funds did not belong to him and the transfers were to a savings account his daughter maintained. The Initial Decision upheld the transfer. I disagree. While Petitioner did not provide documentation about the ownership or funding, the statements in the record show transactions that are unrelated to Petitioner or his wife nor is there any interaction between the accounts the couple used for banking and the daughter's account. Thus, I find that the \$3,000 transferred did not belong to Petitioner or her husband and is not subject to penalty.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision's finding that the transfer penalty properly included \$59,416.94 and \$25,765 but should have excluded \$36,750 for the repayment of the loan. Furthermore, I REVERSE the finding regarding the \$3,000 transfer and instruct that it be removed from the penalty. As such,

Morris County should reduce the penalty to \$85,172.94 or 238 days.

THEREFORE, it is on this ^{26th} day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part as set forth above.



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