



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

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

Y.R.

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 5723-2021

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 December 2, 2021 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's application for Medicaid benefits. Petitioner was found eligible April 1, 2021 but subject

to a transfer penalty of 235 days due to the transfer of \$85,620. Additional documentation was provided to demonstrate fair market value and the penalty was reduced to 210 days based on \$75,100 in transfers. Petitioner, through his Designated Authorized Representative, Shlomo Cohen of Elder Guide, appealed the decision.

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 is only challenging two transfers to his son-in-law of \$21,775 in January and \$8,900 in March 2021. He claims these transfer were made for future expenses for property tax and caregiving. To that end, he produced checks written by the son-in-law to a township and an individual beginning in April 2021. Petitioner provided no witnesses regarding these payments but provided a letter from the individual who allegedly provided care to Petitioner from April to July 2021 at the rate of \$1,700 a week. P-2.¹ Of the nine checks made out to this individual, only five are for \$1,700. P-3.

¹ The letter is signed and contains the signature and stamp of a notary but is missing a certification that the document was signed before the notary as required by law. See <https://www.state.nj.us/treasury/revenue/pdf/NotaryPublicManual.pdf>.

The Initial Decision found that that the transfer penalty should be upheld as Petitioner failed to rebut the presumption that the transfers of \$21,775 and \$8,900 were done to establish Medicaid eligibility. Based on my review of the record I concur.

Petitioner only proffered explanations that \$14,800 was spent on an aide and \$2,057 was spend on property taxes. ID at 8. No explanation was given for remaining \$13,817 transferred to his son-in-law. Moreover, the transfers occurred months before the son-in-law wrote the checks. There was no competent evidence tying the transfers to the checks written by the son-in-law. As the Initial Decision noted there was “no credible evidence that the checks paid to the son-in-law were to pay [P]etitioner’s property taxes” or that the checks allegedly for a caregiver were for fair market value. ID at 9. Without a sufficient residuum of legal and competent evidence in the record to support Petitioner’s claims they must fail. See *Weston v. State of New Jersey*, 60 N.J. 36, 51-2 (N.J. 1972).

Petitioner also argued that he should be able to reapply for Medicaid to reduce the penalty amount. The Initial Decision is correct that “there is no such thing as reapplying to reduce a penalty assessment”. ID at 10. The Superior Court of New Jersey, Appellate Division upheld a similar finding that “Medicaid regulations do no provide for the ‘reopening’ of an existing penalty period through the submission of a later application.” See *C.W. v. Div. of Med. Assistance & Health Servs.*, No. A-2352-13T2, 2015 N.J. Super. Unpub. LEXIS 2104 (Aug. 31, 2015). Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision’s finding that Petitioner was subject to a transfer penalty of 210 days.

30th
THEREFORE, it is on this day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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