



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Lt. Governor

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Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

E.C.,

PETITIONER,

v.

CAPE MAY COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08159-21

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. Respondent filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 23, 2022 in accordance with an Order of Extension. The Initial Decision was received on February 22, 2022.

Based upon my review of the record, I hereby adopt the findings and conclusions of the Administrative Law Judge in their entirety, and I incorporate the same herein by reference. In reaching this decision, I accept the ALJ's fact-findings, which are based, in part, upon her assessment of the witnesses who testified at the administrative hearing. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 575 (1988).

At issue is the imposition of a twenty-two day penalty for the transfer of \$8,175.53. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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): 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 contends that the amount transferred was to repay a loan to her daughter, M.C., for fronting the expense of caregiving services provided by Home Instead from February 2020 through March 2021. Petitioner is ninety-one years old. Until her May 2021 admission to the facility, she lived with her sister in their family home.¹ Because she lived and work an hour away, M.C. was only able to provide services on the weekend. As a result, M.C. arranged for caregiving services to delay Petitioner's admission to a nursing facility. This is understandable especially when you consider that Petitioner began to need constant supervision and assistance in February and March 2020, the beginning of the Covid-19

¹ Petitioner's sister is in her late seventies.

pandemic. That, combined with the documentation in the record (i.e. eligibility assessment, dated invoices and corresponding cancelled check for the exact amounts billed by Home Instead), support a finding that M.C. made these arrangements out of necessity and with the expectation of repayment.

THEREFORE, it is on this 18th day of APRIL 2022,

ORDERED:

That the Initial Decision is ADOPTED.

Gregory Woods

OBO

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