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

E.S.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE	:	**OAL DKT. NO. HMA 07251-2021**
AND HEALTH SERVICES AND	:	
CAMDEN COUNTY BOARD	:	
OF SOCIAL SERVICES,	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 5, 2022, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated July 15, 2021, the Camden County Board of Social Services (CCBSS) advised Petitioner that a penalty of twenty-four days was assessed on her receipt of Medicaid benefits resulting from the transfer of assets, totaling $8,602.44 for

less than fair market value, during the five-year look-back period. The transfer of assets stem from the two checks, in the amount of $5,750 issued on May 3, 2017 and $2,852.44 issued on June 23, 2018, from Petitioner's bank account to her son-in-law, J.D.

The Initial Decision determined that Petitioner had failed to rebut the presumption that the transfers were done for the purposes of qualifying for Medicaid benefits. 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.

On March 31, 2021, a Medicaid application was filed on Petitioner's behalf by her Designated Authorized Representative (DAR), Rikki Kirwan of Senior Care Planning Services. R-1. This was Petitioner's second Medicaid application. ID at 3. As part of her previous application, Petitioner's DAR submitted a letter, dated December 1, 2020, with copies of bank statements from a bank account owned by Petitioner's daughter and power of attorney (POA), H.D., and her husband, J.D. Ibid. The DAR advised in his letter that the two checks that are currently at issue in this matter were reimbursements for payments made by H.D. and J.D. to Liberty Mutual, Petitioner's homeowner's insurance company. Ibid. The total amount of payments made to Liberty Mutual on the statements provided was only $127.64. Ibid.

In connection with the present application, CCBSS sent a letter to the DAR on June 24, 2021, advising that a penalty would be imposed on Petitioner's receipt of Medicaid benefits as result of the two checks, totaling $8,602.44, and that if Petitioner intended to demonstrate that the transfer was done for reasons other than to become eligible for Medicaid, evidence of same would need to be submitted by July 8, 2021. R-1 at 10. The DAR failed to supply documentation by that date. By letter dated July 15, 2021, CCBSS advised the DAR that Petitioner was eligible for Medicaid benefits effective March 1, 2021, with retroactive Medicaid benefits from December 1, 2020 through February 28, 2021. Id. at 15. However, a penalty would be imposed from December 1, 2020 through December 24, 2020. Ibid. On August 4, 2021, the DAR sent an email to CCBSS with attached documentation, which included receipts that the Petitioner's family gathered to rebut the imposed penalty. Id. at 17. The documentation included a handwritten ledger of expenses allegedly paid by J.D., receipts, many of which were illegible, and an invoice with handwritten notations and a list of charges for other expenses. Id. at 27-36. During the hearing in this matter, cleaner copies of the receipts, additional receipts, a revised handwritten ledger by

J.D., and revised handwritten notes at the top of the previously submitted invoice were presented. ID at 5.

Petitioner's representatives alleges that the two checks at issue were reimbursement for expenses paid by J.D. on Petitioner's behalf. Specifically, she alleges that J.D. paid for expenses related to moving Petitioner from her previous home in Massachusetts to New Jersey and damages sustained at Petitioner's apartment in New Jersey. However, the documentation provided by Petitioner does not show that the payments were made for Petitioner's benefit. Specifically, the ALJ found that "the invoices had other names, businesses, and addresses listed, which were not known to [CCBSS] as being affiliated with or for [Petitioner]." ID at 15. It is, thus, unclear whether all of the funds allegedly expended were made for Petitioner's benefit. Moreover, even if the payments made by J.D. were made for Petitioner's benefit, there is nothing in the record to show that Petitioner agreed to reimburse J.D. for these alleged payments or that the two checks at issue were issued to reimburse these expenditures. Moreover, as Petitioner's POA, H.D. had access to Petitioner's bank account at the time that the alleged payments were made. It is unclear then why Petitioner's expenses were not paid directly from Petitioner's account. The payments for the alleged expenses occurred months prior to the issuance of the two checks and the receipts provided do not total the amount of the transfers at issue. Accordingly, there is no nexus between the payments allegedly made and the transfers at issue in this matter. I further note that the DAR originally alleged that these checks were issued to reimburse H.D. and J.D. for payments made to Petitioner's homeowner's insurance company. When that explanation was not accepted by CCBSS as the payments to the homeowner's insurance company only totaled $127.64, a new explanation regarding the purposes of the transfers was provided in connection with the current application. Without adequate documentation showing a nexus between the transfers and alleged reimbursements, Petitioner cannot now claim that the transfers at issue should be offset by random purchases allegedly made on

Petitioner's behalf. Accordingly, I FIND that Petitioner failed to demonstrate that these two checks, totaling $8,602.44, were made solely for a purpose other than to qualify for Medicaid benefits.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT ALJ's recommended decision, as set forth above. Further, I FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made in order to establish Medicaid eligibility, and, therefore, the imposed penalty period is appropriate.

THEREFORE, it is on this 29th day of JULY 2022

ORDERED:

That the Initial Decision is hereby ADOPTED.

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