



State of New Jersey

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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

H.L.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MONMOUTH COUNTY DIVISION
OF SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 03885-2021

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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 3, 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 January 19, 2021, the Monmouth County Division of Social Services (MCDSS) advised Petitioner that a 162-day penalty would be imposed related to transfers totaling \$58,000 for less than fair market value during the look-back period.

However, On February 9, 2021, MCDSS revised the imposed penalty to 139 days based on transfers totaling \$49,875 to Petitioner's son, P.L., during the look back period.<sup>1</sup>

The Initial Decision upholds the imposition of the revised transfer penalty, as Petitioner failed to rebut the presumption that these transfers were done for the purposes of qualifying for Medicaid. See 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

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<sup>1</sup> Petitioner and P.L. certified to MCDSS that \$875 of the withdrawn funds each month related to rental payments from Petitioner to P.L. R-5 and R-6. MCDSS reduced each original penalty transaction to the attested rental amount of \$875. R-1. The excess amount of each withdrawal was determined by MCDSS to have been used for Petitioner’s living expenses and this excess amount was not included in the penalty total. R-14.

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.

Between September 2015 and August 2020, Petitioner withdrew funds from her bank account in cash, totaling \$58,000. R-10. Each individual transaction varied between \$700 and \$1,800, with most of the transactions during this time period ranging between \$900 and \$1,000. Ibid. The funds were mostly withdrawn once per month; however, on some occasions, it appears that multiple withdrawals were made in a singular month and no cash withdrawals were made in other months. Ibid. Petitioner and P.L. advised MCDSS that Petitioner withdrew the funds from her bank account in cash and used the cash proceeds to pay for her monthly living expenses, including \$875 to P.L. for rent, as Petitioner did not use a debit card or checks. R-5 and R-6. Petitioner advised that the remaining funds were used for “food, clothes, pharmacy, and other miscellaneous expenditures for my daily living.” R-5. P.L. stated that Petitioner resided in his home and she paid for “rent, utilities, transportation, ..etc. total \$875. Then she spent the rest as her personal allowance.” R-6. No rental agreement or other documentation showing Petitioner’s living expenses were provided. However, based on Petitioner and P.L.’s statements, MCDSS reduced each of the originally-noted transactions to the attested rental value of \$875 and found that the remaining amounts were used for Petitioner’s living expenses. Accordingly, the imposed penalty of 139 days is based on this revised calculation, totaling \$49,875.

In support of the appeal in this matter, P.L. provided a certification, dated October 18, 2021, attesting that the multiple payments of \$875 that were paid to him by Petitioner were not considered rent and that Petitioner only contributed to the household expenses. P-2. Neither Petitioner nor P.L. testified at the hearing in this matter and accordingly, P.L.’s certification is considered hearsay. While hearsay evidence shall be admissible during contested cases before the OAL some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid

the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). The finding of fact cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972). While P.L. supplied five years of bank statements, from February 2010 through January 2015,<sup>2</sup> which showed that Petitioner withdrew cash from her bank account, no other documentation supporting his contention that these funds were used to pay for household expenses while Petitioner resided with him has been supplied. Specifically, P.L. failed to provide any rental agreements, receipts, bills, invoices, or other documentation showing the specific household expenses that Petitioner allegedly helped pay or how it was determined what portion of the household expenses would be paid by Petitioner. Moreover, both Petitioner and P.L.'s previous statements to MCDSS advised that these \$875 payments to P.L. were for rent, which P.L. now states is not the case. Because P.L. did not testify in this matter, he could not be asked about the changes in his statements related to the purpose of these payments and a credibility determination could not be made.

Moreover, P.L. advised MCBSS in a July 15, 2020 letter that Petitioner resided with P.L. from January 1996 until the end of May 2020, as she was placed in a nursing facility in June 2020. R-4. The transactions at issue show that at least three separate transfers in the amounts of \$1,000 were made after the time Petitioner was placed into a nursing facility and when she, therefore, would not be contributing to household expenses at P.L.'s residence since she no longer resided there. R-10. Two of these transfers made on June 3, 2020 and August 7, 2020 were transferred directly to P.L.'s bank account and the third transfer on June 16, 2020 was made via check withdrawal. Ibid. Petitioner has provided no explanation regarding these transactions. Further, I note that the bank statements provided specifically contradict Petitioner's statement that she did not use checks and only paid for her expenses

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<sup>2</sup> I note that no bank statements were supplied during the applicable five-year look-back period. The statements provided were for the previous five years and those transactions are not being penalized.

through cash. The bank statements show that Petitioner made check payments for clothing stores, to her church, horse stables, and the University of Connecticut, among other payments. R-1.

Accordingly, while Petitioner contends in her exceptions that she withdrew funds in cash in order to pay for her expenses for years prior to nursing care being a consideration, Petitioner has failed to demonstrate through credible documentary evidence the purpose of the specific transfers at issue. Accordingly, I concur with the Initial Decision's findings that Petitioner had failed to meet her burden to show that the transfers at issue were solely for a purpose other than to qualify for Medicaid.

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 has failed to rebut the presumption that the revised transfer of \$49,875 in this matter was made in order to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

THEREFORE, it is on this 25th day of January 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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