



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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the “equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual’s principal place of residence” and when “title to the home” is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have “resid[ed] in the individual’s home for a period of at least two years immediately before the date the individual becomes an institutionalized individual” and “provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.” N.J.A.C. 10:71-4.10(d)4. This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the “equity interest in a home” is

transferred by title to a son or daughter who provided such care to a parent while “residing in such [parent’s] home” that prevented institutionalization for at least two years, the transfer is exempt from penalty. 42 U.S.C. § 1396p(c)(2)(A)(iv). The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to “require special attention and care.” N.J.A.C. 10:71-4.10(d).

In reviewing the caregiver exemption, the Appellate Division noted that the “receipt of Medicaid benefits is not automatic. Understanding the State's need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria as satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application.” M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17.

In M.K., the court had “no doubt [the daughter] extended love and care to her mother that added to M.K.'s comfort, welfare and happiness during those years when she was living in her own home, despite significant medical challenges”. M.K., Slip op. at 17. However, during the two years prior to entering a nursing home, M.K. moved in with her son for a period of five months. The court found that as “‘Medicaid is an intensely regulated program’ and its requirements are strictly enforced;” a five month break in “the mandated two-year time period for care” meant that the caregiver exemption had not been met. M.K., Slip op. at 15 (citing H.K. v. State, 184 N.J. 367, 380).

In the present matter, Petitioner was admitted to a nursing facility on May 29, 2019. ID at 3. On May 30, 2019, Petitioner’s daughter, J.G. submitted an application for Medicaid Managed Long Term Services and Supports (MLTSS) on Petitioner’s behalf with OCBSS. R-5. As part of Petitioner’s Medicaid application, J.G. signed a liquidation agreement to sell Petitioner’s home to pay for her care. R-7. Petitioner’s home is still titled solely in Petitioner’s name and was listed twice for sale. R-8. The house has not sold and both listings expired.

Ibid. J.G. currently resides in Petitioner's home. In November 2019, J.G. applied for a caregiver child exemption in order to transfer Petitioner's home to herself. Following Petitioner's annual redetermination for Medicaid benefits, OCBSS issued a letter, dated August 30, 2021, which advised that Petitioner's Medicaid benefits were continued; however, the letter noted that the caregiver exemption was denied "due to [J.G.] not residing in [her] mother's home for a period of at least two years immediately before the date she became an institutionalized individual."<sup>1</sup> R-3.

The Initial Decision upheld OCBSS's denial of J.G.'s caregiver exemption request, and I concur. While it appears that J.G. cared for Petitioner in the years prior to Petitioner being institutionalized, it is clear that J.G. did not provide care to Petitioner while living in Petitioner's home during the two years immediately preceding Petitioner entering the nursing facility, as required by the regulation. As noted by the Administrative Law Judge (ALJ), the relevant period of time in this matter would be May 29, 2017 through May 29, 2019. J.G. testified that she cared for Petitioner in Petitioner's home between approximately September 2016 and the spring or summer of 2018, when J.G.'s spouse's illness required her to move back to the home J.G. shared with her spouse. ID at 4. J.G. stated that she cared for Petitioner at J.G.'s home until it was foreclosed upon, which was sometime in March or April 2019. Ibid. At that point, J.G. and Petitioner moved back into Petitioner's home until Petitioner was placed in respite care and then entered a nursing facility. Id. at 4-5. Thus,

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<sup>1</sup> It appears from the record that communication between J.G. and OCBSS occurred in the interceding period between J.G.'s original request for the caregiver exemption in November 2019 and the issuance of the August 30, 2021 letter by OCBSS. Specifically, by letter dated October 29, 2020, OCBSS advised J.G. that if she wished to transfer Petitioner's property to her name without penalty through the caregiver exemption, she would need to supply documentation to show that for two years prior to institutionalization, Petitioner required nursing home level of care which J.G. provided to Petitioner in Petitioner's home. R-12. Various documentation appears to have been submitted by J.G. to OCBSS at varying times within this period. P-1 and P-2. The Administrative Law Judge noted that J.G. submitted a generic document from a website in March 2021 and July 2021 to support her request for the exemption. ID at 5-7 (citing P-2 at 3 and R-9). The website is not affiliated with the New Jersey Medicaid program.

according to J.G.'s testimony, neither she nor Petitioner resided in Petitioner's home for at least one year during the relevant period.<sup>2</sup>

While I sympathize with J.G. and Petitioner's situation, N.J.A.C. 10:71-4.10(d)4 is clear that the care provided by J.G. to Petitioner needed to occur in Petitioner's home during the two-year period immediately preceding Petitioner becoming an institutionalized individual. Although approximately one year of the time J.G. cared for Petitioner occurred in Petitioner's home during the two-year period at issue, Petitioner moving into J.G.'s home during the time period excludes the caregiver exemption from applying to a transfer of Petitioner's home to J.G. Accordingly, OCBSS appropriately denied J.G.'s request for a caregiver's exemption in this matter.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the Initial Decision

THEREFORE, it is on this 29th day of MARCH 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

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<sup>2</sup> The timelines provided by J.G. in her testimony and in a document and in letters written by J.G. that were admitted into evidence differ in relation to the exact timing of when J.G. alleged to reside at Petitioner's residence and when she resided at her previous residence with her spouse. See P-1 and P-2. However, J.G. cannot show in any of the timelines presented that she cared for Petitioner in Petitioner's home for the required two year period prior to Petitioner entering a facility.