

This matter arises from the Morris County Department of Family Services' (MCDFS) March 4, 2021 notice of eligibility and imposition of a 92-day penalty due to Petitioner's transfer of \$33,000 during the look-back period. 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.¹ 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. 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).

On or about November 2, 2020, Petitioner, through his attorney, filed his third Medicaid application with MCDFS.² At issue are two checks to Petitioner's granddaughter, D.G., totaling \$33,000. The checks for \$3,000 and \$30,000 were issued on December 25, 2016 and August 14, 2018 respectively. Petitioner claims that these transactions reflected

¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

²Petitioner's prior applications were denied for failure to provide verifications necessary to determine eligibility.

the payment of monies D.G. inherited from her father when she was a minor.³ Petitioner maintains that he was designated to serve as D.G.'s guardian, and that he retained the inheritance at D.G.'s request even after she reached the age of majority. In support of this position, D.G. and her sister, S.D., state that they were the recipients of a small inheritance after their father passed and acknowledged N.M. to be one of D.G.'s guardians.⁴ However, neither D.G. nor S.D. state the specific amount of their inheritance. Instead, Petitioner submits an attorney letter from January 2, 1998 that lists the assets of the estate: (1) two savings accounts with a \$500 balance; (2) a checking account with a \$915 balance; (3) a John Hancock Life Insurance Policy with a payout of \$70,514; and (4) a house located in Howell, New Jersey. From this letter, the ALJ deduces that the \$33,000 in question stems from the John Hancock life insurance payout to D.G. and S.D., which would amount to approximately half of the \$70,000 policy. Unlike the ALJ, I am not satisfied that the documents provided support the premise that this transfer was for a purpose other than to establish Medicaid eligibility, namely fulfillment of D.G.'s inheritance.

First, there is no testimony or documentary evidence as to the actual amount of D.G.'s inheritance. Did the insurance proceeds comprise the entirety of D.G.'s inheritance? Were the proceeds divided equally among the beneficiaries? Did D.G. receive anything from the sale of the Howell property? Was M.N., as presumed guardian of D.G.'s person and property, holding all of D.G.'s inheritance or just a portion? In short, what was the full amount of D.G.'s inheritance and who was the trustee of those funds?

Second, although the Initial Decision determines that the source of these funds was a life insurance payout to D.G. and her sister, D.G.'s statement alludes to the fact that her inheritance exceeded the proceeds of the life insurance policy. In her July 17, 2020 letter, D.G. states that she received \$12,000 in August of 1998 and that "approximately \$30,000 remained in the custodianship of her grandmother." Yet, only \$16,630.20 was set aside in a

³ D.G. was sixteen years old when her father passed away in October 1997.

⁴ Petitioner and his wife, J.M., served as D.G.'s guardians.

designated custodian account. This account reached maturity in 2009. The disposition of this CD is unknown. It does not appear on Petitioner's application, and there are no documents tracing the management of these funds. Was the CD renewed or was the money withdrawn and placed in a new CD? Did D.G. receive these funds? Who paid the tax on the interest accumulated before the CD reached maturity?

Third, in which CD or account did Petitioner keep the \$13,369.80 balance of Petitioner's inheritance? Why was the additional \$3,000 check drawn on yet another account and issued in 2016, well before Petitioner's wife began to get her affairs in order prior to surgery? Was this part of the inheritance? There is no indication from the account on which the check was drawn; the check itself or the timing of the check that it was part of D.G.'s inheritance. D.G. had received \$12,000 of her inheritance in 1998 and then \$3,000 in 2016. Were these the only other disbursements from Petitioner's inheritance or did others occur over the 17 years since D.G. reached the age of majority? While transactions outside of the look-back period would not affect the length of the transfer penalty, they are important to understand the origin and disbursement of the funds at issue.

I FIND that Petitioner has failed to rebut the presumption that the transfers were solely for a purpose other than qualifying for Medicaid. An asset "shall be considered to be transferred by the individual when any action is taken, either by the individual or any other person, that reduces or eliminates the individual's ownership or control of the asset." N.J.A.C. 10:71-4.10(o). However, "[i]f the individual can satisfactorily establish that the withdrawn funds were . . . the sole property of, and were contributed to the account by the other owner, . . . the withdrawal of those funds shall not result in the imposition of an asset transfer penalty." N.J.A.C. 10:71-4.10(o)(3). In effect, Petitioner is arguing that there is no transfer within the meaning of the regulations because this money always belonged to D.G. and Petitioner was merely a steward of D.G.'s inheritance. However, Petitioner has failed to present any competent documentation regarding the amount of D.G.'s inheritance or the origin of the \$30,000 or \$3,000 transfers at issue. Petitioner has not kept the funds in a

separate, readily identifiable account for approximately 18 years. There is no way to know if D.G. has already received her inheritance or if some portion of it remained with Petitioner until 2018. If any portion remained with Petitioner, however, those funds were deposited into Petitioner's personal accounts and the funds comingled. As Petitioner has unrestricted access to the funds, any transfers out of the account to D.G. are considered transfers for less than fair market value. N.J.A.C. 10:71-4.1(a)2.⁵ Petitioner's witness testimony is not sufficient to overcome the fact that Petitioner had unrestricted access to the funds or the residuum rule. A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. Petitioner presented no competent evidence establishing that the source of the funds transferred to D.G. was from her inheritance and not Petitioner's assets.

THEREFORE, it is on this 8th day of MARCH 2022,

ORDERED:

That the Initial Decision is ADOPTED.



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

⁵ See also POMS SI 01140.205 "When a claimant or recipient co-owns an account with someone who is not eligible for SSI benefits, we assume that all the funds in the account belong to the SSI claimant or recipient."