

application; however, Atlantic County imposed a 579-day penalty resulting from transfers totaling \$209,359.05 during the look-back period. R-1 at 3-7. The only transfer that is being contested in this matter resulted from the transfer of \$107,200, which represented the net sale proceeds from the sale of Petitioner's home to her son, R.R.¹

The Initial Decision upholds the imposition of a transfer penalty imposed, as the Initial Decision found that Petitioner failed to rebut the presumption that this transfer was 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

¹ Atlantic County determined that the sale of Petitioner’s property was for \$50,000 less than the home’s fair market value of \$200,000. R-1 at 19. Petitioner also gifted \$30,000 in home equity for the sale. Id. at 20. Petitioner concedes that the \$80,000 transfer penalty related to the sale of the house for less than fair market value and the gifting of \$30,000 in home equity was appropriately imposed. ID at 4. Moreover, it appears that Atlantic County additionally imposed a penalty related to transfers to R.R. in the total amount of \$22,159.05. Id. at 1-7. No documentation was entered into the record showing the purpose of these transfers and the Initial Decision does not discuss these transfers. Petitioner additionally did not file exceptions to the Initial Decision related to any of the transfers noted by Atlantic County. Accordingly, these transfers are not contested and are not at issue in this matter.

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.

Since November 2018, Petitioner has resided with R.R. and R.R.’s wife. ID at 3. She previously resided in her own home. Ibid. On November 1, 2018, Petitioner and R.R. executed a “Room Rental Agreement,” wherein Petitioner agreed to pay R.R. \$600 per month to live in his home for a period of one year. R-1 at 8-9. On November 7, 2018, Petitioner, R.R., and Petitioner’s daughter, L.R., executed a notarized “Personal Care Contract,” wherein R.R. and L.R. agreed to provide daily personal and financial management tasks for Petitioner, who was said to “require . . . significant assistance with her activities of daily living and with the management of her property and finances,” without which Petitioner would “be at risk and may suffer harm.” Id. at 10. The agreement lasts for the remainder of Petitioner’s life. Id. at 16. The agreement additionally provided that R.R. and L.R. would “advocate for and safeguard [Petitioner’s] rights under the law,” including “advocacy with respect to the number of home care hours [Petitioner] is entitled to receive under the state Medicaid program [and] appropriate placement in an assisted living or nursing home.” Id. at 15. The agreement further provides that “the parties shall take any action required to ensure that the compensation paid, and these services rendered hereunder, are not deemed a transfer of assets that results in any period of Medicaid ineligibility. . . .” Id. at 11.

On May 1, 2019, Petitioner executed an un-notarized, one-page “Loan Agreement,” wherein Petitioner agreed to “pay back all monies spent on the renovations of my home. This payment will be reimbursed to my son, [R.R.], upon sale of my home, whether this occurs when I am alive or deceased.” P-4. Petitioner signed the agreement and it was witnessed by an unknown individual. Ibid. At the bottom of the agreement, language was taken from a website that addresses how to avoid Medicaid asset transfer penalties during the five-year look back period, including making home modifications. Ibid.

On March 12, 2020, R.R. sold Petitioner’s home to his daughter, L.M., and her husband for \$150,000. R-1 at 19. The settlement and disbursement of proceeds took place on March 31, 2020. Id. at 20. The proceeds of the sale were deposited into Petitioner’s checking account and then on April 3, 2020, R.R. issued a check to himself in the amount of \$107,200. Id. at 21. The memo line of the check stated “Remodel House pay back.” Ibid. R.R. alleges that the \$107,200 payment to himself was reimbursement for the home equity loans he took out on his own home in order to pay for renovations to Petitioner’s home. ID at 5.

The Initial Decision finds that Petitioner has not met her burden in demonstrating that the \$107,200 transfer to R.R. was solely for some other purpose than to qualify for Medicaid. ID at 8. I concur. Petitioner had not resided in her own home since at least November 1, 2018 when she executed a one-year “Room Rental Agreement” with R.R. R-1 at 8-9. Moreover, the “Personal Care Contract” stated that Petitioner needed significant assistance with her activities of daily living and management of property and finances. Id. at 10. There is, thus, no evidence in the record to show that Petitioner had any intention of moving back to her residence or that any alleged remodeling of her home was for Petitioner’s benefit.

Additionally, the language contained in the “Personal Care Contract” and the “Loan Agreement” discuss the Medicaid’s look-back period and Medicaid asset transfer penalties. The “Loan Agreement” specifically has language regarding how to avoid Medicaid asset

transfer penalties and suggests that home modifications can be used to avoid such a penalty. R-1 at 4. The inclusion of such language in the contracts shows that the establishment of Medicaid eligibility for Petitioner appears to have been a factor in the transfer at issue.

Further, Petitioner has not shown a nexus between the alleged loans, any actual remodeling expenses for Petitioner's home, and the \$107,200 transfer. It is unclear when the alleged loans were entered into it, the total amount of the alleged loans, or that the alleged loans were used for Petitioner's benefit. Petitioner did not present any home equity loan agreements between R.R. and his bank. While R.R. did produce copies of TD Bank Loan Payment Credit Slips for two separate "Personal/Consumer loans," nothing in the documents presented indicate the total amount of the loans or the purpose of the loans. P-1. In fact, a Loan Payment Credit Slip for one of the loans shows a payment that was made on April 30, 2019, which is prior to the "Loan Agreement" being signed by Petitioner. Ibid. In addition, none of the check copies provided by R.R., which begin on May 30, 2019 through April 20, 2020 and were issued to himself, his wife, and to other parties, including his daughter, L.M., and his son-in-law's uncle, who was allegedly paid in cash for "labor," show that remodeling work was performed on Petitioner's home for Petitioner's benefit. Ibid. While many of the memo lines on the checks state "house" and R.R., for the purposes of disputing the imposed penalty in this matter, handwrote notations on the check copies indicating the alleged purpose of the checks, there is no evidence presented that the checks represented actual work performed on Petitioner's home, and no invoices, contracts, estimates, or receipts were presented to show the charges for any alleged remodeling work being completed on Petitioner's home. Ibid. Of particular note, several of the payments that are alleged to be remodeling expenses incurred on Petitioner's behalf occurred both before the "Loan Agreement" was signed by Petitioner and after the home was sold to R.R.'s daughter. Ibid.

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the

transfer at issue in this matter was made in order to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

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

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods OBO

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