

Medicaid application with eligibility as of June 27, 2017; however a penalty of 146 days was assessed resulting from the transfer of assets totaling \$61,919 for less than fair market value during the five-year look-back period. The transfer of assets stemmed from withdraws from Petitioner's bank account to Petitioner's son and power of attorney (POA), W.A., between December 8, 2011 and November 28, 2016.¹

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

¹ Originally, Atlantic County issued a determination that assessed a penalty period of 194 days on Petitioner's receipt of Medicaid benefits, stemming from transfers totaling \$82,319. ID at 2. However, Atlantic County revised the penalty determination to \$61,919, after accounting for a rental expense of \$1,000 per month for the period that Petitioner resided with W.A.

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.

At the hearing in this matter, W.A. testified that the funds at issue were used to pay for Petitioner’s expenses while residing with W.A. in his home. ID at 3. W.A. stated that Petitioner, who is now deceased, insisted upon paying him \$1,500 per month towards expenses; however, W.A. would sometime accept a different amount, depending on the household expenses for that month. Ibid. I note that W.A. withdrew funds from Petitioner’s bank account after she was admitted into a nursing facility in August and September 2014. Id. at 7. W.A. further testified regarding certain transactions and generally stated that many of the transfers at issue related to these household expenses, while others related to the purchase of items for Petitioner, including a hospital bed or “something she wanted to buy.” ID at 4-6. W.A. stated that a \$4,000 transfer to W.A.’s bank account on May 4, 2012 related to storm damage sustained to his home and lawnmower. Id. at 5. He further noted that Petitioner gave gifts to relatives and donated to United States Navy veterans’ organizations. Id. at 6. W.A. is a Navy veteran. Id. at 3.

The Administrative Law Judge (ALJ) found that the Petitioner failed to sufficiently explain how the funds at issue were spent and did not offer sufficient, credible evidence to dispute the imposed penalty. I concur. Petitioner’s representatives failed to produce any documentation that would support the assertion of W.A. that these funds were used to pay for Petitioner’s living expenses or any items that were allegedly purchased for Petitioner’s benefit. No receipts, invoices, or bills were provided that would have shown Petitioner’s living expenses or that the funds transferred to W.A. were used to pay for said expenses. In fact a \$4,000 transfer to W.A. from Petitioner’s bank account was to pay for damages sustained to W.A.’s property as a result of a storm rather than for expenses related directly to Petitioner. Regardless, Atlantic County accepted a rental payment expense of \$1,000 per month during the time that Petitioner resided with W.A. and reduced the penalty that was originally

imposed. However, without documentation showing the purpose of the remaining transfers, Petitioner's representatives have failed to meet their burden in showing that the transfers at issue were for Petitioner's benefit and that they transfers at issue were not done for the purposes of qualifying to Medicaid benefits.

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

THEREFORE, it is on this 28th day of October 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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