

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated September 6, 2022, the Respondent Cumberland County Board of Social Services (CCBSS) granted Petitioner's June 2022 Medicaid application with eligibility as of June 1, 2022.¹ However, a penalty of 196 days was assessed resulting from a transfer of assets, totaling \$73,468.63, for less than fair market value during the five-year lookback period. The transfer of assets stem from the sale of Petitioner's home in Florence, New Jersey (property). Petitioner appeals the Medicaid eligibility transfer penalty of 196 days imposed by Respondent CCBSS for the sale of his home for less than the fair market value. Petitioner contends that the property was sold at fair market value and that the value of the property should not be the equalized value.

The following facts are derived from the record. On June 1, 2022, an application for Medicaid benefits was completed on Petitioner's behalf. At the time of application, Petitioner resided in a nursing facility. On April 15, 2023, Petitioner designated Sara Spiegel (S.S) an employee at Future Care Consultants (FCC) as his Designated Authorized Representative (DAR). Prior to his admission to a nursing facility, Petitioner lived at his home located in Florence, New Jersey. On February 6, 2020, the property was listed by for sale by a licensed Real Estate Agent, On March 8, 2020, the property was sold for \$255,000. The tax assessed value of the property by Florence Township was \$324,100 at the time of sale. CCBSS determined that the fair market value (FMV) of the property was \$328,468.63.² On August 16, 2022, CCBSS issued Petitioner a letter advising that there was an assessed penalty of 196 days (\$73,468.63) based upon difference between the FMV and sale price (\$328,468.63

¹ It appears that Petitioner was also granted three months of retroactive coverage. Accordingly, the penalty period in this matter covers the period between March 1, 2022 and September 12, 2022. R-1.

² The tax assessed value of the property when it was sold in March 2020 was \$324,100. That amount divided by .9867, which is the Burlington County assessment ratio for Florence Township, New Jersey in the State Table of Equalized Valuations, results in an equity value of \$328,468.63. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Burlington County, 2019, <https://www.nj.gov/treasury/taxation/pdf/lptval/2019/AllCounties.pdf>.

- \$255,000 = \$73,468.63). On September 29, 2022, Petitioner requested a fair hearing. The matter was transferred to the Office of Administrative Law (OAL) as a contested case, where a hearing was held before an Administrative Law Judge (ALJ) on May 17, 2023. On June 7, 2023, the ALJ issued an Initial Decision reversing the transfer penalty imposed by the CCBSS.

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 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.

The fair market value of a property is "an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred." N.J.A.C. 10:71-4.10(b)6. Absent a certified appraisal, the value of a resource is

considered "the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value)." N.J.A.C. 10:71-4.1(d). The equity value of real property is "the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any. . . ." N.J.A.C. 10:71-4.1(d)1iv.

The parties' primary disputes before the ALJ were the value of Petitioner's home when it was sold in March 2020, and whether Petitioner sold the home below its market value to establish Medicaid eligibility. The Initial Decision found that the property was in poor condition at the time of the sale and therefore, the sale price was the fair market value of the property. However, I disagree with the ALJ's determination because the record is insufficient to make such a determination. There is insufficient credible documentary evidence in the record to show the condition of the property at the time of the sale, the cost of any repairs that the property needed, or a certified appraisal of the property either prior or subsequent to the sale of the property. While a certification from Mr. Erdos was presented, Mr. Erdos is not a certified real estate appraiser. Moreover, his certification is considered hearsay. Although 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). As noted, no documentary evidence was entered into evidence showing the state of the property at the time of the sale. While a small number of photographs were produced, these photographs do not show the extent of the alleged dilapidated condition of the property that would justify the property being sold for \$73,468.63 less than the equity value of the property determined by CCBSS or support Mr. Erdos's contentions regarding the state of the property at the time of the sale.

Additionally, Jacqueline Srour, Esq., attorney for Petitioner's Designated Authorized Representative (DAR), Sara Spiegel of Future Care Consultants, testified as to the state of the property at the time of the sale. However, since Ms. Spiegel was not appointed as Petitioner's DAR until April 15, 2022. It is unclear how either Ms. Spiegel or Ms. Srour could have firsthand knowledge of the state of property when the property was sold in March 2020, more than two years prior to Petitioner appointing Ms. Spiegel as his DAR.

Here, Petitioner asserts that his home was in such bad condition that the \$255,000 sales price was the home's true fair market value. In order to support such a conclusion, however, Petitioner needs to provide more than an affidavit from the purchaser's real estate agent describing the condition of the home and more than two pictures of a portion of the interior of the home. Petitioner should provide a certified appraisal of the property as well as additional documentary evidence to support his contention that the house was in a dilapidated condition at the time of the sale. It is not uncommon to prepare an assessment of a property after it has been sold. In conducting such an appraisal, a certified or licensed real estate appraiser will consider such factors as the listing information, interviews with the listing and/or purchaser's agent, a drive-by inspection of the exterior of the property, interview of the current owner, interview with the neighbors, pre-sale photos of the interior of the property and documentary evidence of the cost of the repairs to the home.

Based upon my review of the record and for the reasons set forth herein, I REVERSE the Initial Decision accordingly and REMAND the matter to allow Petitioner the opportunity to provide sufficient credible evidence to support the conclusion that the sales price of the home was the fair market value of the home.

THEREFORE, it is on this 7th day of September, 2023,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED as set forth herein.



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