

with eligibility as of August 1, 2021. However, a penalty of 322 days was assessed resulting from the transfer of assets, totaling \$116,613.06, for less than fair market value during the five-year look-back period. The transfer of assets stem from alleged renovations made to Petitioner's daughter's home.

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.

Petitioner moved in with her daughter and power of attorney, L.M., on April 3, 2017. ID at 3. L.M. alleges that Petitioner lived in a room on the first floor of L.M.'s house that did not have a closet or doors for privacy, as all three existing bedrooms in the house were occupied. Ibid. L.M. additionally alleges that Petitioner used \$116,613.06 of her personal funds to remodel L.M.'s home in order to create a formal bedroom and expand a half-bathroom into a full bathroom on the first floor. Ibid.

On January 11, 2018, Petitioner and L.M. entered into an Occupancy Agreement, which set forth the terms of Petitioner's living arrangement with L.C. and payment for household expenses related to Petitioner's care. R-3. On March 6, 2019, a deed was created that granted petitioner a life estate interest in L.M.'s residence in exchange for the sum of \$145,000. R-4. The deed was then filed with the Monmouth County Clerk's Office on March 11, 2019. Ibid. Petitioner argues that the transfers at issue, totaling \$116,613.06, were not a gift but were for Petitioner's benefit in order to reside at L.M.'s residence and in exchange for a life estate in the property.¹ ID at 4 (July 1, 2022).

On August 19, 2021, Petitioner filed an application with MCDSS for Medicaid's Managed Long-Term Services and Supports program (MLTSS). R-5. MCDSS advised Petitioner through a letter dated October 27, 2021 that a 322-day penalty was imposed on Petitioner's receipt of benefits as a result of her transferring \$116,613.06 for less than fair market value during the five-year look-back period. R-2. On November 9, 2021, MCDSS issued a letter confirming the imposition of the penalty period. R-1.

¹ It is unclear from the record how the \$145,000 purchase price in exchange for the life estate was determined when L.M. testified that the transfers at issue were made as part of that purchase price. L.M. testified that the approximately \$29,000 remainder of the balance was an estimate that L.M. made of the total amount Petitioner paid to the contractors. ID at 5 (July 1, 2022). As she alleges that Petitioner also paid \$116,613.06 to the contractors for the renovations as well, this testimony is confusing. However, L.M. stated that when she totaled the invoices from the contractors, the balance was less than \$29,000. Ibid. No invoices, contracts, receipts, or canceled checks were entered into the record to show if and what Petitioner paid for the renovations that L.M. alleges occurred.

The Initial Decision dated July 1, 2022², found that Petitioner had proven that the renovations to L.M.'s home, which were allegedly paid for by Petitioner, were for Petitioner's benefit and therefore, the transfers at issue were not made to establish Medicaid eligibility. I disagreed, as the record was insufficient to make such a determination. Specifically, there was nothing in the record to show that the renovations alleged were actually completed to L.M.'s property nor that the transfers at issue were used to pay for said renovations if they occurred. Moreover, there was no demonstration that any of the alleged renovations or transfers were completed solely for Petitioner's benefit. No documentation was provided by Petitioner to show that the transfers at issue were used to specifically create a living space for Petitioner at L.M.'s home. I reversed the Initial Decision and remanded the matter to allow Petitioner the opportunity to provide documentation to demonstrate that the alleged renovations to create a living space for Petitioner did occur and occurred solely for Petitioner's benefit, and to provide documentation to show the cost of the alleged renovations and that the transfers at issue were used to directly pay for the renovations for Petitioner's benefit.

Further, although L.M. testified that the transfers at issue "were used to renovate a room in L.M.'s home into a bedroom and expand the first-floor half bath into a full bathroom," the architectural plans show that the renovations exceeded the existing space in L.M.'s home and included large-scale additions to the existing structure of her home. ID at 4 (July 1, 2022). Specifically, the plans appear to show that, in addition to expansion of a half bathroom and pantry in the existing space, an entirely new bedroom, deck/porch, mudroom, laundry room, and expansion of the existing kitchen were also contemplated

² As this matter has been remanded twice, there is an Initial Decision dated July 1, 2022, an Initial Decision dated March 8, 2023, and the current Initial Decision dated December 6, 2023.

and may have occurred. Accordingly, clarification regarding the specific renovations/additions, if any, that were paid for by Petitioner was additionally necessary.

I also agreed with the July 1, 2022 Initial Decision's determination that the life estate interest was not properly accomplished because Petitioner failed to provide any compensation in exchange for the life estate interest. I adopted the July 1, 2022 Initial Decision in part and reversed in part and remanded the matter to allow Petitioner to provide the requested documentation and necessary clarifications.

At the first remand hearing, the Administrative Law Judge (ALJ) found that the amount paid to CnS Contracting, LLC for the renovations was \$94,719 and the remaining balance of the \$116,613.06 transfers at issue was paid to third party vendors. ID at 4 (March 8, 2023). The renovation included creating a private bedroom for Petitioner on the first floor of the home with a closet and full bathroom with wheelchair accessible doorways in both rooms. Ibid. In addition, the pantry/laundry area was moved and enlarged, the mudroom was moved and enlarged, and the back porch was expanded. Ibid. The kitchen was also expanded. The ALJ found that the transfers totaling \$116,613.06 were shown to be used for the renovations to L.M.'s home to accommodate Petitioner.

I agreed that the funds at issue were used for renovations to L.M.'s home, but I did not find that the entire cost of the renovations were used solely for Petitioner's benefit and therefore, should not be penalized as a gift. I found that the funds used for the creation of the bedroom and expansion of the existing bathroom into a full bathroom were for Petitioner's benefit and should not have been included in the penalty assessed, but any other renovation to L.M.'s home, including the new pantry, deck/porch, mudroom, laundry room, and expansion of the existing kitchen were not for Petitioner's sole use and are considered gifts to L.M., which increased the value of her property and were used for the

household's benefit. The total cost of the renovations exclusively related to the creation of the bedroom and expansion of the bathroom was unclear from the record. Therefore, I reversed the March 8, 2023 Initial Decision and I remanded the matter for further development of the record to allow Petitioner the opportunity to show what the total cost of the renovations were for the creation of the bedroom and the expansion of the bathroom only.

At the second remand hearing, after hearing testimony from an owner of CnS Contracting, LLC, the ALJ found that the amount paid for the creation of the bedroom and the expansion of the bathroom totaled \$61,354. ID at 8. The December 6, 2023 Initial Decision concluded that the transfer penalty must be revised because the evidence substantiates that \$61,354 of the \$116,613.06 spent to renovate L.M.'s house was used exclusively for Petitioner's benefit, and therefore, the balance of \$55,259.06 is subject to a transfer penalty. I agree.

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that \$55,259.06 is subject to a transfer penalty.

THEREFORE, it is on this 6th day of MARCH, 2024

ORDERED:

That the Initial Decision dated December 6, 2023, is hereby ADOPTED.



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