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**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**  
Division of Medical Assistance and Health Services  
P.O. Box 712  
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SARAH ADELMAN  
Commissioner

GREGORY WOODS  
Assistant Commissioner

C.F.,

PETITIONER,

v.

GLOUCESTER COUNTY DIVISION  
OF SOCIAL SERVICES AND  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**ORDER OF REMAND**

**OAL DKT. NO. HMA 09221-2024**

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 22, 2025, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated June 19, 2024, the Gloucester County Division of Social Services (Gloucester County) approved Petitioner's Medicaid application with eligibility as of July 1, 2022, but imposed a transfer penalty. R-1.

Prior to the commencement of the OAL hearing, the parties agreed to have the matter heard as a motion for summary decision. ID at 2. N.J.A.C. 1:1-12.5(b) provides a motion for summary decision may be granted if there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). Even if the non-moving party comes

forward with some evidence, the courts must grant summary judgment if the evidence is “so one-sided that the moving party must prevail as a matter of law.” Id. at 540. If the non-moving party’s evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

The Administrative Law Judge (“ALJ”) determined that this matter was appropriate for summary disposition. ID at 5. The ALJ also determined that the transfer penalty imposed by Gloucester County was not appropriate and “that the property was not an asset that was available or under the control of the Petitioner.” ID at 11. The ALJ further determined that the transfer of property by B.F. on January 17, 2024, could not have been transferred in contemplation of establishing Medicaid eligibility since Petitioner had been receiving Medicaid since July 1, 2022. Ibid. I disagree that summary disposition is appropriate at this time. A review of the evidence confirms there are genuine issues of material fact and that the record was not fully developed nor was the evidence used to determine the transfer penalty accurate or concise.

First, the ALJ must consider the implication of 42 U.S.C.S. § 1396r-5(c)(5) in determining the familial resources. The ALJ relied on 42 U.S.C.S. §1396R-5(c)(4) which states, “resources of the community spouse are not deemed as available to the institutionalized spouse.” ID at 10. When the ALJ applied this regulation to the facts at hand, the ALJ determined that since Petitioner transferred his share of the subject property to B.F., it could no longer be considered as an available asset available to him. Ibid. Relying solely on 42 U.S.C.S. §1396R-5(c)(4) does not take into consideration that Petitioner’s home should not be exempt from consideration pursuant to 42 U.S.C.S. §1396r-5(c)(5) which reads as follows:

(5) Resources defined. In this section, the term “resources” does not include—

(A) resources excluded under subsection (a) or (d) of section 1613 [42 USCS § 1382b], and

(B) resources that would be excluded under section 1613(a)(2)(A) [42 USCS § 1382b(a)(2)(A)] but for the limitation on total value described in such section.

In conjunction of review with the above regulations, consideration must be made of 42 U.S.C.S. §1382b(c)(1)(D) relating to the deliberate and voluntary transfer of resources that makes the resources unavailable.

(D) For purposes of this subsection, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be disposed of by the individual or by any other person, that reduces or eliminates the individual's ownership of or control of such resource. 42 U.S.C.S. §1382b(c)(1)(D).

As such, even if an asset is not countable while held by the member's spouse, it may be subject to a transfer penalty if it is disposed of for less than fair market value.

Second, since the irrevocable trust established by B.F. creates a life estate, the life estate must be valued. To determine whether a penalty shall be assessed in a case involving a life estate, "the value of the asset transferred and the value of the life estate shall be computed by determining the fair market value." N.J.A.C. 10:71-4.10(b)(6)iii. 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)(1)(iv). Here, the penalty was calculated using the assessed value obtained from Zillow rather than fair market value, which Gloucester County concedes may "not be the most accurate way to prove fair market value."<sup>1</sup> R-2.

Third, the record is unclear regarding the total number of days Petitioner was assessed a transfer penalty. In fact, Gloucester County provides two different totals for the transfer penalty imposed. In a letter dated May 29, 2024, Petitioner was assessed a 698-day transfer penalty. R-1, p.20. Later, on June 19, 2024, a second letter shows Petitioner was assessed as a 610-day penalty. R-1, p.25. These varying amounts are significant and need to be clarified after the fair market value is determined in accordance with the regulations.

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

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<sup>1</sup> Zillow is an online real estate marketplace company that offers pricing for real estate.

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.

Here, the issue is whether the ALJ was correct to determine that summary decision was appropriate based on these set of facts. By way of background, Petitioner entered long term care in June 2022. ID at 3. On July 5, 2022, Petitioner conveyed ownership of the subject property to B.F., Petitioner’s spouse making her the sole owner of the property. Ibid. On the same day, B.F. executed an irrevocable trust titled B.T.F.<sup>2</sup> Ibid. N.F., Petitioner’s daughter, was named as trustee of the irrevocable trust and designated beneficiary. See Petitioner’s Brief, Exhibit B If N.F. were to pass away, the remainder of the trust would be distributed to P.F.<sup>3</sup> Ibid. On July 29, 2022, Petitioner filed a Medicaid application. ID at 3. On September 29, 2022, Petitioner’s Medicaid application was approved with eligibility effective July 1, 2022. Ibid. On January 17, 2024, B.F. transferred the subject property to the irrevocable trust for \$1. Ibid. The trust provides B.F with a life estate. ID at 4. On May 13, 2024, Petitioner provided documentation for

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<sup>2</sup>. B.T.F. represents Petitioner’s spouse’s initials.

<sup>3</sup>. P.F.’s familial status is not provided in the “Administration of Remaining Trust Property” section of the trust.

his annual redetermination. ID at 3. On May 29, 2024, Gloucester County issued a 698-day penalty based on B.F.'s transfer of assets totaling \$268,599. R-1.

It is well established that all Medicaid applicants must disclose financial information to determine eligibility. If a transfer penalty is assessed that applicant may rebut the transfer penalty imposed. N.J.A.C. 10:71-4.10(j). There are, however, some instances when a transfer of assets during the look-back period may qualify as an exemption from the imposition of a transfer penalty. One exemption consistent with federal law, provides a transfer penalty shall not apply when assets are transferred to an individual's spouse or to another for the sole benefit of the individual's spouse. N.J.A.C. 10:71-4.10 (e) (2); 42 U.S. Code § 1369p (c)(2)(B)(i). This exemption is not absolute as the transfer of assets must pass the "sole benefit" test per regulation. To satisfy this requirement, there must be a written document "which legally binds the parties to a specific course of action," identifies who will benefit from the transfer and names the State of New Jersey (State) as the first remaining beneficiary. N.J.A.C. 10:71-4.10 (f). Any transfer made without such written designation to the State as the first remaining beneficiary shall not be considered to have been made for the sole benefit of the spouse. Ibid. Here, the trust designates N.F. as the first beneficiary and remainder of the trust to P.F. should N.F. pass away. See Petitioner's Brief, Exhibit B. This designation appears contrary to the mandates set forth in the regulation because the State was not named as the first remaining beneficiary as set forth in N.J.A.C. 10:71-4.10 (f). Ibid.

Accordingly, for the reasons set forth above, I hereby REVERSE the Initial Decision and REMAND with instructions to conduct a full hearing to further develop the record in accordance with record set forth above.

THEREFORE, it is on this 22nd day of MAY 2025

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED as set forth herein.

*Gregory Woods*  
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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance  
and Health Services