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DEPARTMENT OF HUMAN SERVICES
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GREGORY WOODS
Assistant Commissioner

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

C.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
OCEAN COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. No. HMA 03925-2024

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 January 16, 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 a letter dated January 31, 2024, Ocean County Board of Social Services (Ocean County) approved Petitioner's November 6, 2023, application, but assessed a penalty of 14 days on the receipt of Medicaid benefits resulting from a transfer

of assets totaling \$5,694.54 for less than fair market value during the five-year look-back period. R-8.

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.

By way of background, on November 6, 2023, Petitioner’s Designated Authorized Representative, S.K. filed a Medicaid application on behalf of Petitioner. R-1.

Accordingly, November 6, 2023, serves as the baseline date that triggers the look back period. During its review for eligibility, Ocean County determined that within this timeframe, a transfer of assets totaling \$5,694.54 was made in resources for less than fair market value and assessed a 14-day period of ineligibility. R-6. The transfer in question involves the closing transaction of PNC bank account number xxxx85 which held \$5,694.54 in an account jointly owned by Petitioner and S.S., Petitioner's sister and Power of Attorney. ID at 3, R-5. During the Office of Administrative Law hearing, S.S. testified that she provides financial support for Petitioner to include Petitioner's monthly cell phone bill and Petitioner's daughter's cell phone bill. ID at 3. S.S. also testified that she regularly ordered groceries to be delivered to the home where Petitioner and her mother resided. Ibid. S.S. further testified that although the grocery expenses were not itemized, the groceries were "split 50/50" with their mother. Ibid. Lastly, S.S. testified Petitioner owes more than the amount S.S. transferred to herself when the joint account was closed. Ibid. When Petitioner testified during the hearing, Petitioner agreed with the testimony of S.S. and testified that "she owes S.S. a lot of money for the financial support provided to her by S.S." ID at 4.

The Administrative Law Judge (ALJ) determined that Petitioner did demonstrate that "a small portion" of the assessed penalty totaling \$979.15 was based on fair market value. ID at 9. The Initial Decision also determined that the appropriate penalty amount should be "\$4,715.39 for less than fair market value, and the penalty period is twelve days from November 1, 2023, to November 12, 2023." Ibid. I agree to the extent that the transfer penalty should exclude expenditures made for Petitioner's cell phone bill only.¹ However, any recalculation of the total penalty and correlating days of ineligibility should

¹ According to the evidence, Petitioner's daughter's phone bill was included with Petitioner's monthly Verizon phone bill under area code 908. ID at 3.

be conducted by Ocean County. As such, the modified calculations should be established by Ocean County to determine the appropriate penalty amount and days of ineligibility after removing payments for the cost of Petitioner's cell phone bill during the relevant period.

As to the remainder of the penalty not excluded, it is well established that the transfer of an asset jointly held with another person shall be considered transferred by the individual when action is taken. N.J.A.C. 10:71-4.10(o). In addition, transfers of assets to a friend or relative for care or service provided free in the past are presumed to have been delivered without compensation. N.J.A.C. 10:71-4.10(b)(6)(ii). If payment is to be made there must be a preexisting written agreement to pay for such services at the relevant market rate. Here, there is nothing in the record to show that Petitioner and S.S. entered into a prior written agreement for the services provided by S.S. during the relevant timeframe.

Thus, based upon my review of the record, and for the reasons set forth herein, I hereby ADOPT in part the ALJ's recommended findings that a transfer penalty should be imposed and RETURN the matter to Ocean County to recalculate the total penalty amount and number of days of ineligibility in accordance with the modified penalty amount determined. Specifically, upon return, Ocean County shall provide a detailed breakdown that excludes the amount paid towards Petitioner's portion of the Verizon phone bill. This information is essential for clarification of the appropriate penalty.

THEREFORE, it is on this 14th day of JANUARY 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED in part as set forth above.

That the Initial Decision is hereby RETURNED in part as set forth above.

Gregory Woods

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