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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

D.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES

AND ATLANTIC COUNTY

DEPARTMENT OF FAMILY AND

COMMUNITY DEVELOPMENT,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 09786-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 27, 2025, in accordance with an Order of Extension.

This matter arises from the Atlantic County Department of Family and Community Development (Atlantic County) imposing a \$334,649.17 transfer penalty for Petitioner's receipt of Medicaid benefits. The issue presented here is whether Atlantic County correctly imposed the \$334,629.17 transfer penalty under 42 U.S.C. §1396p(c)(2)(B)(iii), N.J.A.C. 10:71-4.10, and Medicaid Communication 16-05.

In determining Medicaid eligibility for someone seeking an institutional level of care benefits, the counties must review five years of financial history. Under the Deficit Reduction Act (DRA) of 2005, if an applicant transfers assets for less than the fair market value during the lookback period, then those assets are included as eligible resources available to the applicant, and a period of ineligibility is imposed, which is known as the transfer penalty. 42 U.S.C. §1396p(c)(1); N.J.A.C. 10:71-4.10(a).

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, Petitioner applied for Medicaid Managed Long-Term Services and Supports (MLTSS) program through their daughter and Power of Attorney (POA) W.B. on May 7, 2018. (R-1 pages 3-18.) This application was Petitioner's fifth application for Medicaid benefits. Prior to the May 7, 2018 application, Petitioner applied for Medicaid on January 7, 2016, March 2, 2017, September 5, 2017, and February 5, 2018. (R-1 page 1) By letter dated November 29, 2018, Atlantic County approved Petitioner's May 7, 2018 application;

however, it imposed a penalty of 1,515 days resulting from Petitioner's transferring of \$521,153.56 for less than fair market value.¹ (R-1 page 19.)

On December 12, 2018, Petitioner's prior counsel requested a fair hearing. Petr.'s Br. at 1. The hearings were held on February 8, 2019, and on March 15, 2019. Petr.'s Br. at 2. A status conference was scheduled for April 11, 2019, but the matter was adjourned. Ibid. While the parties were awaiting a new hearing date, the Office of Administrative Law (OAL) withdrew the matter on May 2, 2019. Ibid. The withdrawal was not communicated to Petitioner. Ibid. Petitioner passed away on March 10, 2020. Ibid.

Petitioner's current counsel, Mr. Lawson, requested a new hearing; however, on February 28, 2022, Atlantic County denied his request to retransmit the hearing request, notwithstanding that the file was erroneously marked withdrawn by the OAL staff. Ibid. Mr. Lawson appealed Atlantic County's decision. Ibid. On June 13, 2023, the Appellate Division of the New Jersey Superior Court issued an opinion granting the appeal and ordering the DMAHS to reinstate the matter and transmit it to the OAL to schedule a Fair Hearing. Ibid.

After status conferences on November 27, 2023, and February 5, 2024, the Administrative Law Judge (ALJ) ordered that Motions for Summary Judgment be filed on or before March 18, 2024. ID at 2. Atlantic County modified the penalty period and agreed to change penalty amount from \$521,153.56 to \$334,649.17 for 973 days after the parties submitted the Motion for Summary Judgment. (R-1 page 1.)

The new hearing was held on August 26, 2024, via Zoom. ID at 2. During the hearing, Mary Lange (Lange), administrative supervisor for the Atlantic County's Long-Term Medicaid Unit, testified that a June 1, 2012, \$225,078.08 Fidelity transfer and the

¹ As is described below, the amount later was changed from \$521,153.56 to \$334,649.17.

funds not received from the sale of the condo recorded on July 27, 2012, were paid to W.B. ID at 5. Lange received a June 21, 2012 letter from W.B. regarding these transfers, where Petitioner indicated that they were transferring the titles of certain assets to W.B. Ibid. These transfers were made to accounts in W.B.'s name only, not including Petitioner. Ibid. Atlantic County did not receive any information indicating that the full amount of the transfers from Petitioner to W.B. was returned to Petitioner. Ibid. Lange also testified that Petitioner's nursing home costs were paid directly from Petitioner's bank account. Ibid.

W.B. testified on behalf of Petitioner. Ibid. She said that Petitioner was a resident of Florida. ID at 5. Since the probate process was difficult in Florida, Petitioner transferred all their assets in W.B.'s name so that W.B. could pay Petitioner's bills and probate process. Ibid. Petitioner was temporarily residing in New Jersey when they fell and broke their hip and was admitted to a nursing home in May 2012. Ibid. W.B. further testified that she paid the \$334,649.17 amount in transfers to Petitioner's nursing home but did not provide any documentation. Ibid.

The ALJ kept the record open until September 26, 2024, to allow for supplemental submissions, specifically for Mr. Lawson to provide copies of checks that W.B. paid for Petitioner's nursing home. ID at 2. No such documentation was provided.

The Initial Decision affirmed Atlantic County's determination. The ALJ found that Petitioner has not shown that the asset transfers totaling \$334,649.17 to W.B. and N.B. were transferred exclusively for some other purpose than establishing Medicaid eligibility and concluded that Atlantic County did not err in assessing a transfer penalty of \$334,649.17, for 973 days from March 1, 2018, through October 3, 2020. ID at 10. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the ALJ.

In this case, Atlantic County found Petitioner eligible for Medicaid Benefits but imposed an amended transfer penalty of 973 days based on transferring \$334,649.17 of assets during the 5-year look-back period. The applicable look-back period for the May 7, 2018 application was 60 months prior to Petitioner's first application. Petitioner's counsel argues that penalty period should have begun on Petitioner's May 7, 2018 application, not from the January 7, 2016 application. However, State Medicaid Manual §3258(c) dictates that when an individual has multiple periods of institutionalization or has made multiple applications for Medicaid (whether or not they are successful), the look-back date is based on a baseline date that is the first date upon which the individual has both applied for Medicaid and is institutionalized. Similarly, if a noninstitutionalized individual has applied for Medicaid more than once and has made more than one transfer of assets, the baseline date is that date on which the individual has first applied for Medicaid or later made the first transfer of assets for less than fair market value after applying. Thus, each individual has only one lookback date, regardless of the number of periods of institutionalization, applications for Medicaid, periods of eligibility, or transfers of assets.

Petitioner also argued that the transferred funds were spent for Petitioner's benefit. The ALJ kept the record open to allow Petitioner to produce check images or other documentation that W.B. paid for Petitioner's nursing home. On September 25, 2024, Petitioner provided a list of all the checks written to Petitioner's nursing home. The checks, which totaled \$195,294.65 were paid out of a shared account, rather than an account belonging solely to W.B. As such, Petitioner failed to provide adequate explanations or supporting documents to rebut the presumption that the transfers of \$334,649.17 were made in order to establish Medicaid eligibility.

Accordingly, I hereby ADOPT the recommended ALJ's decision and FIND that Atlantic County correctly determined the lookback period from the January 7, 2016 application, not the May 7, 2018 application. I also FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made to establish Medicaid eligibility. Thus, the penalty imposed was appropriate, and Petitioner is subject to a transfer penalty of 973 days based on the transfer of \$334,649.17.

THEREFORE, it is on this 24th day of FEBRUARY 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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