



PHILIP D. MURPHY
Governor

SARAH ADELMAN
Commissioner

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

TAHESHA L. WAY
Lt. Governor

GREGORY WOODS
Assistant Commissioner

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

J.C.,

PETITIONER,

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE

OAL DKT. NO. HMA 10934-2024

AND HEALTH SERVICES AND

SOMERSET COUNTY BOARD

OF SOCIAL SERVICES

RESPONDENTS.

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 21, 2025, in accordance with an Order of Extension.

The issue in this matter arises regarding Petitioner's request for a caregiver exemption so as to remove the penalty due to the transfer of Petitioner's home valued at \$702,00.00 to Petitioner's son, D.C. The Somerset County Board of Social Services (Somerset County) denied the Petitioner's application for a caregiver's exemption for their son pursuant to N.J.A.C. 10:71-4.10(d). The Petitioner requested a fair hearing which was held on October 8, 2024.

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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the “equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual’s principal place of residence” and when “title to the home” is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have “resid[ed] in the individual’s home for a period of at least two years immediately before the date the individual becomes an institutionalized individual” and “provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.” N.J.A.C. 10:71-4.10(d)4. This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care to a parent while "residing in such [parent's] home" that prevented institutionalization for at least two years, the transfer is exempt from penalty. 42 U.S.C. § 1396p(c)(2)(A)(iv). The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." N.J.A.C. 10:71-4.10(d). Also, the provided care must "have been essential to the health and safety of the individual and shall have consisted of activities such as, but not limited to, supervision of medication, monitoring of nutritional status, and ensuring the safety of the individual." Id.

In reviewing the caregiver exemption, the Appellate Division noted that the "receipt of Medicaid benefits is not automatic. Understanding the State's need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria as satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application." M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17. In another Appellate Division case, A.M. v. Monmouth Co. Board of Social Services, 466 N.J. Super. 557 (App. Div. 2021), the court held that it was acceptable for the child caregiver to be employed outside of the home and still qualify for the child caregiver exemption. Additionally, the court went on to say that the child caregiver is not required to fund all of the care provided to the

parent. It is acceptable for the child caregiver to arrange for aides to assist the parent while the child is at work, and for the parent to incur the expense. Ibid. at 570.

In the present matter, in April 2024. Ibid. D.C. also testified to all the care that he provided for the Petitioner during the two-year period prior to putting them into a nursing home. Ibid. In 2021 the Petitioner had taken a fall in the parking lot of Walmart, and then took a fall in the house in 2022. Id. at 3. The Petitioner was in failing health due to a brain tumor which was diagnosed in 2005. Ibid. However, D.C. reported that the Petitioner had been living a "joyful and fulfilling life" following the brain tumor until May 2019, when he noticed significant deterioration in the Petitioner's health. Ibid. He prepared meals for the Petitioner and helped them bathe and to get to the bathroom and in and out of bed. Ibid. He noted that Petitioner's son, D.C., testified on behalf of the Petitioner and himself seeking the care giver exemption for the transfer of the Petitioner's home to him. Id. at 2. He is twenty-four years old and has been living at home with the Petitioner and caring for them prior to their placement in a nursing home the Petitioner had become incontinent and needed diapers as well as frequent changes of the bed linens. Ibid. Eventually, the family hired someone to come in and assist with the Petitioner's care, but the time and frequency or evidence of same was not provided. Ibid. D.C. testified that he started working full-time for an engineering company in July 2022, following his graduation from college, that required him to travel for work from time to time. Ibid. After several falls due to the Petitioner being left alone, the family determined that the Petitioner was in need of a long-term care facility. Ibid.

The Petitioner's doctor, Karen Sun, MD, testified as to the Petitioner's failing health. She was qualified as an expert and accepted by counsel for the respondent, but no expert report or CV from Dr. Sun were provided. Dr. Sun was the Petitioner's internal medicine doctor and testified that in her expert opinion the Petitioner was in need of

nursing home level of care. Id. at 4. Dr. Sun testified that the Petitioner's health has been failing for the last five years and that she is aware that D.C. was living with the Petitioner and providing care for them. Ibid. She wrote a letter, which was entered into evidence stating that the Petitioner needs assistance with dressing, toileting, bathing and transferring, and they were at risk for falls. Ibid. Dr. Sun also sent a letter to D.C.'s employer, dated February 2, 2024, requesting that he be permitted to work remotely in order to care for the Petitioner. Ibid.

Michelle Tomaszewski, a Human Service Specialist, testified on behalf of Somerset County. Tomaszewski testified that Somerset County determined that the petitioner's son did not meet the criteria for caregiver's exception under N.J.A.C. 10:71-4.10(d), because he did not provide full-time nursing home-level care for the requisite two year period of time. Id. at 2. She testified that they determined that the son did not meet the standard as he was working at a full-time job outside of the home, while J.C. was left alone in the home, which resulted in several falls, ultimately resulting in her placement in a nursing home. Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) stated that the issue in this case was whether the care provided by D.C. meets the requirements for a caregiver exemption under the regulations. Id. at 8. Somerset County maintained that the care provided by D.C. failed to satisfy the criteria of N.J.A.C. 10:71-10(d), based on D.C.'s fulltime employment, as well as a lack of evidence that nursing home level of care was required or provided for the requisite period of time. Ibid. The ALJ found that while the fact that D.C. worked full time and did not provide care 24/7 is not dispositive of the issue, it does shift the burden to demonstrate entitlement to the exemption to the Petitioner. Ibid. The ALJ further found that there was no expert report in this case and very little evidence that "nursing home level of care" was needed or being provided prior to the

Petitioner entering the nursing home, or the period of time for which they needed such care.

In the case of A.M. v. Monmouth County Board of Social Services, 466 N.J. Super. 557 (App. Div. 2021), the care giver exemption was granted to an individual working outside the home. However, in A.M., the applicant had reduced their work hours to care for their mother, worked limited hours and worked close to home. In addition, when he was not there, he arranged for health aides on a regular basis to come in to care from his mother. In the present case, D.C. worked full time, and his place of employment was twenty to thirty minutes away from the home. ID at 9. Furthermore, D.C. testified that his work required some travel, and it was not until February of 2024 that J.C.'s doctor drafted a letter to D.C.'s employer requesting that he be permitted to work from home to care for his mother. Ibid. There was no evidence or testimony as to what arrangements, if any, were made when D.C. was out of the house all day at work or when he travelled, with the exception of his brother or friends checking in on the Petitioner when he was away or at work. The ALJ found that this was not "nursing home level of care." Ibid. As such, the ALJ concluded that D.C. had not demonstrated by a preponderance of the credible evidence that he was providing nursing home level of care for the requisite period of time to qualify for the caregiver's exemption. Ibid.

However, N.J.A.C. 10:71-4.10(d) does not require "nursing home level of care." The ALJ committed error by holding the care D.C. provided to a "nursing home level of care" standard. N.J.A.C. 10:71-4.10(d) requires that the provided care "must exceed normal personal support activities." Id. Also, the provided care must "have been essential to the health and safety of the individual and shall have consisted of activities such as, but not limited to, supervision of medication, monitoring of nutritional status, and ensuring the safety of the individual. Id. D.C. testified that he prepared meals for the Petitioner

and helped them bathe and to get to the bathroom and in and out of bed. He also testified the Petitioner had become incontinent and needed diapers as well as frequent changes of the bed linens. However, there is no testimony regarding supervision of medication or monitoring of nutritional status. With that said, the activities mentioned in N.J.A.C. 10:71-4.10(d) are illustrative and by no means are all the mentioned activities required to meet the standard that the provided care "must exceed normal personal support activities."

The ALJ in this matter applied an incorrect standard to the care D.C. provided to the Petitioner and failed to consider whether the provided care: "exceed[ed] normal personal support activities," and if that care was "essential to the health and safety of the individual." Thus, based on the record before me and for the reasons enumerated above, I hereby REVERSE the Initial Decision in this matter and REMAND the matter for the ALJ to rule directly, and seek further testimony if needed, on the specific questions of: (1) whether the care D.C. provided exceeded "normal personal support activities," and (2) whether that care was "essential to the health and safety" of the Petitioner.

THEREFORE, it is on this 17th day of January, 2025

ORDERED:

That the Initial Decision is hereby REVERSED AND REMANDED.



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