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DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
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STEPHEN CHA, MD, MHSR
Acting Commissioner

GREGORY WOODS
Assistant Commissioner

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

C.F.,	:	
	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
	:	
v.	:	**FINAL AGENCY DECISION**
	:	
GLOUCESTER COUNTY DIVISION OF SOCIAL SERVICES AND DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES,	:	**OAL DKT. No. HMA 10950-2025 (ON REMAND HMA 09221-2024)**
	:	
RESPONDENT.	:	

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 March 2, 2026, 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 August 25, 2025, the Gloucester County Division of Social Services (Gloucester County) approved Petitioner's Medicaid application but

assessed a penalty of 583 days for the transfer of an asset in the amount of $256,863.16.[1] R-5.

By way of background, Petitioner entered long term care in June 2022.[2] J-1. 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. Ibid. N.F., Petitioner's daughter, was named as trustee of the irrevocable trust and designated beneficiary. See Petitioner's Brief dated September 13, 2024, Exhibit B.[3] If N.F. were to pass away, the remainder of the trust would be distributed to P.F. Ibid. On July 29, 2022, Petitioner filed a Medicaid application. ID at 4. 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 5. On May 13, 2024, Petitioner provided documentation for his annual redetermination. ID at 4. On May 29, 2024, Gloucester County issued a 698-day penalty based on B.F.'s transfer of property for less than fair market value. Ibid.

Petitioner appealed the imposition of the transfer penalty imposed and requested a hearing on the matter. However, as opposed to having a hearing, the parties agreed to having the matter heard as a motion for summary decision. ID at 2. Oral argument was held via telephone on November 8, 2024. Ibid. The record closed on November 11,

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[1] On remand, the original amount of $268,600 transfer penalty imposed was amended by the Board and reduced to a penalty of $256,863.16 resulting in 583 days of ineligibility. ID at 6.

[2] The Joint Stipulation of facts identified as J-1 was submitted under OAL Docket No. HMA 09221-24.

[3] Petitioner's brief dated September 13, 2024, was submitted under OAL Docket No. HMA 09221-24.

2024, and was reopened for the parties to provide additional information. Ibid. Thereafter, the record closed again on January 30, 2025. Ibid.

On February 21, 2025, an Initial Decision was issued wherein the ALJ determined that this matter was appropriate for summary disposition. ID at 2. The ALJ reached this decision after determining that 42 U.S.C. 1396r-5(c)(4), which states that resources of the community spouse are not deemed available to the institutionalized spouse as the appropriate regulation to be applied in this case.[4] ID at 10. 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."[5] 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.

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

[4] The ALJ reached this finding under OAL Docket No. HMA 09921-24.
[5] This finding was set forth under OAL Docket No. HMA 09921-24.

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.

Moreover, N.J.A.C. 10:71-4.10 provides for 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 dated September 13, 2024, 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.

While the State follows federal impoverishment law designed to protect the community spouse from becoming pauperized, that policy must be balanced against the need to ensure that Medicaid eligibility is reserved for individuals with limited assets, not those who attempt to shield their assets to benefit family members at the expense of taxpayers. Beginning with this basic premise, the record needed to be further developed to clarify and assess whether summary decision was appropriate based on the facts of this case. To make this determination, the undersigned issued an Order of Remand on May 22, 2025, which reversed the Initial Decision and remanded the matter to further develop the record. More specifically, the Order of Remand sought 1) a review of the implication of 42 U.S.C.S. §1396r-5(c)(5) analyzed in conjunction with 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," and consideration of U.S.C.S. §1382b(c)(1)(D) which relates to the deliberate and voluntary transfer of resources that makes resources unavailable, 2) to have the life estate created by the trust valued and 3) an accurate total for number of days Petitioner should be assessed a transfer penalty, if applicable.

In response, the ALJ conducted a hearing to further develop the record which was held on September 10, 2025. ID at 3. The record was supplemented with testimony from B.F., Petitioner's spouse and and Respondent's witness, J.N., Human Service Specialist 2.[6] ID at 5. B.F. testified that "she was advised to transfer the property for estate planning purposes (avoiding probate), and the transfer was not to establish eligibility for herself." ID at 6. B.F. also testified that that if a transfer penalty is assessed, she would not be

[6] It should be noted that J.N.'s testimony was not specifically set forth in the record.

able to pay for Petitioner's care and would have to sell her home which would result in her not having a place to live. ID at 7. B.F. confirmed that the primary beneficiary of the trust was her daughter rather than the State because she wanted to keep the property in the family. Ibid. B.F. also confirmed that she and Petitioner had not done any other financial planning and did not consider other ways to pay for Petitioner's medical care. Ibid. B.F. further confirmed that she lives off of her social security, receives allowances from Petitioner's social security allotment, and is responsible for paying taxes, utilities and maintenance while residing in the home. Ibid. B.F. confirmed that she did not try to sell the house for fair market value before transferring it to the trust, was not aware that she no longer owned the property and did not know why she was advised to remove her husband from the deed. Ibid. Lastly, B.F. testified that she did not make any attempts to reverse the trust since the penalty issue was raised. Ibid.

The ALJ also conducted an analysis regarding the implication of 42 U.S.C.S. §1396r-5(c)(5) in relation to 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," by considering U.S.C.S. §1382b(c)(1)(D) which reads as follows:

> 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).

After consideration of 42 U.S.C.S. §1396r-5(c)(5), 42 U.S.C.S. §1396R-5(c)(4), U.S.C.S. §1382b(c)(1)(D) and testimony provided by B.F., the ALJ concluded that no testimony had been provided that would warrant any exception or exemption from the imposition of a transfer penalty despite B.F.'s contention that a penalty would impose a hardship. ID

at 13. Lastly, the ALJ considered the life estate valuation provided by Gloucester County. ID at 6. The ALJ noted that the life estate value of the property was calculated by multiplying the fair market value of $407,707.94 by the life estate multiplier of .36998 which relates to B.F.'s age of 84 which yields a total of $150,843.78. Ibid. Next, the ALJ notes the remainder value of the property is calculated by multiplying the fair market value of $407,707.94 by the remainer multiplier of .63002 which totals $256,864.16 minus the $1 transferred to the trust which provides a total of $256,863.16. Ibid. The ALJ further notes the $256,863.16 amount is divided by $440.10 which is the penalty divisor for the year in question resulting in 583 days for the transfer penalty as set forth in Medicaid Communication No. 24-03. Ibid. Based on a review of the totality of testimonial and documentary evidence provided during the hearing, the ALJ concluded that the transfer of the property was made for less than the fair market value, that the transfer does not qualify for an exception or exemption including the exemption that allows for certain transfers for the sole benefit of the spouse and that the transfer penalty imposed as amended by Gloucester County was appropriate. ID at 14.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision, as set forth above. Further, I FIND that the imposed penalty period of 583 days based upon transfers totaling $256,863.16 was appropriate in this matter. Finally, while I am sympathetic to the potential hardship to B.F., it is not clear that she has exhausted all of her options and may be well advised to seek further expert advice.

THEREFORE, it is on this 2nd day of March 2026,

ORDERED:

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

Gregory Woods

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