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

C.S.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
V.	:	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE	:	**OAL DKT. NO. HMA 9764-2014**
AND HEALTH SERVICES &	:	
CAPE MAY COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 29, 2014, in accordance with an Order of Extension.

This matter concerns the imposition of a penalty due to Petitioner's transfer of assets. Petitioner was found otherwise eligible for benefits on August 1, 2013 but subject to a penalty of thirteen months and six days. Prior to applying in New Jersey she had been found eligible for Medicaid in Pennsylvania and received benefits there from December 2009 until December 2010 when it was discovered that Petitioner's home had been sold in December 2009. Pennsylvania reopened her Medicaid benefits in September 2011. R-1 at 108. She moved to New Jersey in July 2013 and applied for New Jersey Medicaid on August 9, 2013.

Cape May County determined that Petitioner had transferred assets, namely her home in Florida and the proceeds of her Individual Retirement Account (IRA). Petitioner argued that the home transaction had been penalized already by Pennsylvania and that the IRA funds were used in Florida in July 2009 to buy an SUV to transport her.

The Initial Decision found that Petitioner had been penalized based on the nine month gap in Medicaid coverage in Pennsylvania. It does not appear that the transfer of the home and the subsequent repayment to Petitioner of some of the sale proceeds was treated by Pennsylvania as a penalty. However, it does appear that Pennsylvania Medicaid recognized the transactions and treated Petitioner as having excess resources. While New Jersey would have come to a different conclusion regarding the transactions, I FIND they have been dealt in accordance with Pennsylvania Medicaid rules and cannot be used again to affect Petitioner's eligibility.

With regard to the use of the IRA funds, there is no evidence that Pennsylvania knew about the IRA account. To that end, the Initial Decision

determined that there was a penalty regarding its use to purchase a car. The Initial Decision found that as the car, paid for on July 14, 2009, was going to be used to "transport petitioner or for her to drive" the transfer actually occurred in February 2012 when Petitioner "permitted her son-in-law. F.C. to trade-in the Chevy Traverse for another vehicle" and received no compensation. ID at 6. The $20,000 price at the time of the trade-in was set as the transferred amount. However, the record sets out a different timeline that belies a finding that the purchase of the Chevy was for Petitioner's benefit.

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). The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted "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). It is Petitioner's burden to rebut this presumption.

I FIND that the use of Petitioner's IRA worth $43,211 to purchase a Chevy Traverse in July 2009 is a transfer of assets that is subject to a penalty. According to her children's summary of the facts, in May 2009 Petitioner was diagnosed with "advanced dementia" and "confined to a skilled nursing facility in Florida." P-1 at 7. In July 2009 her children relocated Petitioner to a nursing facility in Pennsylvania. According to the bill of sale for the car, a deposit was placed on June 24, 2009 using a credit card from C., which is the last name of her son-in-law. P-1 at 4. On July 14, 2009, the car dealership received the

balance of the sale price including $43,211 from Petitioner's IRA. If Petitioner moved to a Pennsylvania nursing home in July 2009, it is hard to conclude that the purchase and registration of the car in Florida on July 14, 2009 was for her sole benefit.[1] Thus, the use of her funds to purchase a vehicle when she had already been diagnosed with advanced dementia, had been living in a Florida nursing home for over a month and was planning on being relocated to another nursing home in Pennsylvania cannot be said to be for her sole benefit.

THEREFORE, it is on this 23RD day of DECEMBER 2014

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED in part regarding the transfer of Petitioner's home in Florida;

That the Initial Decision in this matter is hereby REVERSED with regard to the transfer of Petitioner's IRA account valued at $43,211; and

That Cape May County shall assess a transfer penalty for $43,211.

Richard H. Hurd Chief of Staff for Valerie Harr

Valerie Harr, Director
Division of Medical Assistance
and Health Services

[1] The record contains no evidence that title in this car was ever in Petitioner's name. The Initial Decision states that Petitioner "permitted" her son-in-law to trade in the Chevy for another vehicle in 2012. ID at 6. There is no evidence of how Petitioner, who suffered from dementia and had been in a Pennsylvania nursing facility for three years, was able to accomplish this.