



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

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

H.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
BURLINGTON COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 3495-2014

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents in evidence. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is September 5, 2014, in accordance with N.J.S.A. 52:14B-10 which requires an

Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on July 22, 2014.

This matter concerns transfers Petitioner made to her son and daughter-in-law totaling \$134,000. This results in a penalty period of seventeen months and six days. This amount represents two different transactions. One was for \$22,000 to improve the son's home. The second was for \$112,000 to purchase a life interest in the son's home. The Initial Decision upheld that the transfers were for less than fair market value and I agree.

On July 26, 2010 Petitioner signed a caregiver agreement where instead of paying for services, she gave her son and daughter-in-law a \$112,000 mortgage on the home she owned. The care agreement lists a litany of items that Petitioner's son must perform but no indication how many hours were actually provided or the basis for coming up with the compensation of \$112,000. The agreement states she is only entitled to two meals a day – breakfast and dinner and her personal needs are to be “periodically” assessed and provided by the son “if required”. There is no evidence that the services were actually provided or at a rate commensurate with unskilled, unlicensed caregivers. In fronting the payment to her son for future “care”, Petitioner failed to show she received fair market value for the transfer.

In what appears an attempt to further protect the \$112,000 from a transfer penalty, the caregiver agreement purports that this amount is equal her “life interest” in the son's property. The mortgage note, which is also dated July 26, 2010, states “[i]n return for a loan that I receive in the principal amount of up to \$112,000” Petitioner would pay annual interest of 2.8%. While Petitioner felt the

need to record this mortgage note, at no time did the family execute and record a deed that would grant Petitioner a life estate in the son's property.

The life interest that Petitioner received did not convey ownership in her son's property as a deed was never created. Rather the terms of the care agreement conditioned Petitioner's life interest in ways that made it something less than a life estate. A life estate is defined as "[a]n estate to be held by grantee or devisee for the term of his own life, or for that of another person, or for more lives than one." Ballentine's Law Dictionary, 3rd Edition. Petitioner's "life interest" is for a term of less than her life. While her interest terminates at her death, Petitioner also agreed that it terminates if she fails to live at her son's home for "a continuous period" of four months or if she "voluntarily" vacates the house and signs a "written waiver" or if her son sells the house and does not buy another property. P-1 at B. Thus, I agree that the valuation of the transfer of \$112,000 is not supported by the record.

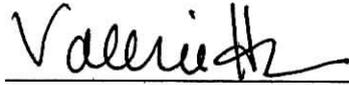
I further find that Petitioner has not demonstrated that the \$22,000 transferred to her son was for fair market value. It was alleged that this transfer was to modify their home by "making the bathrooms handicapped accessible, making the stairway handicapped accessible, as well as fixing up the room in the" home where Petitioner was living. P-1 at A. To support this, Petitioner produced a construction contract dated July 29, 2010 with a price of \$22,795. P-1 at E. That document contains no mention that the work for the "[r]emodel of existing garage," including removing the brick face, installing windows, aluminum siding and electrical boxes, was to include handicap modifications to make the garage accessible to Petitioner. It is Petitioner's burden of proof to demonstrate

that she received fair market value for the transfers. N.J.A.C.10:71-4.10(j). The record presented by Petitioner fails to meet that burden.

THEREFORE, it is on this ^{5th} day of SEPTEMBER 2014

ORDERED:

That the Initial Decision is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services