



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

VALERIE HARR
Director

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

H.D.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
V.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 6461-2011
	:	
AND HEALTH SERVICES &	:	
	:	
OCEAN 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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 4, 2014, in accordance with an Order of Extension.

This matter concerns the transfer of Petitioner's home in Tuckerton in 2005 to her son and daughter-in-law while she retained a life estate. Petitioner applied for benefits in September 2008. While the life estate was disclosed, the deed was outside the then three-year look back period. After leaving the home in August 2007 to live with her son, Petitioner never returned. She entered a nursing facility in February 2008. Ocean County approved the application as of November 1, 2008. In a subsequent redetermination, Ocean County learned that the home was being rented out and that Petitioner's son was receiving the rental payments. Petitioner is appealing the determination that the rental income should be included in contributing to Petitioner's cost of care. She argues that the life estate deed extinguishes her rights to the property when she remained out of the home and excludes the rental payment. The ALJ agreed with Ocean County and upheld the inclusion of the rent.

For the reasons that follow I hereby ADOPT the legal analysis contained in the Initial Decision but hereby REVERSE the conclusion that the income belongs to Petitioner. Rather I agree with the Initial Decision's determination that the defeasible life estate caused by the condition subsequent "is indistinguishable from a transfer for less than fair market value, therefore, the event that extinguished the life estate is appropriately considered" a transfer. ID at 6. It is Petitioner's own action when she transferred the home and her subsequent move from the property that extinguished her life estate. She did not receive the value of her life estate as based on her life expectancy. Rather she voluntarily gave up her right to the life estate and ceded its value to her son and daughter-in-law.

Case law supports the conclusion that the extinguishment of a life estate, prior to the natural death of the life tenant, must be compensated. For example, a value of a life estate based on the individual's age at the time of sale to a third party results in a transfer if the life tenant is not compensated from the proceeds. See L.M. v. DMAHS and ACBSS, OAL DKT. NO. HMA 12300-06, decided March 2, 2007 (upholding the transfer penalty where the Medicaid applicant received less than the value of life estate at time of sale). Other cases have reached the same conclusion and imposed a transfer penalty when the value of the life estate is not received. See Matter of Giordano (Richard O.M.), 28 Misc. 3d 519, 2010 NY Slip Op 20190 (calculated the life estate value due a Medicaid recipient when the property is sold) and Matter of Peterson v Daines, 77 A.D.3d 1391 (N.Y. App. Div. 4th Dep't 2010) (Medicaid applicant's failure to receive life estate value when the property was sold by daughter/remainderman constitutes a transfer of assets for Medicaid purposes). Petitioner failed to receive any compensation from the extinguishment of the life estate in February 2008 which constitutes a transfer.

Thus, the assessed value of the property in February 2008, which is six months from the date she left the Tuckerton property, must be multiplied by .52149, the life estate value for a 75 year old as set forth in the Social Security Program Operations Manual (POMS). POMS 01140.120. See also State Medicaid Manual § 3258.9.A. That value is the transfer amount for which Petitioner received no compensation and is subject to a transfer penalty. I hereby instruct Ocean County Board of Social Services to calculate the penalty and to impose the penalty or seek incorrectly paid benefits as permitted by law.

THEREFORE, it is on this 3rd day of DECEMBER 2014

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED with regard to the legal conclusions;

That the Initial Decision is hereby REVERSED as to the finding that the rental income should be included as Petitioner's available income; and

That the matter is hereby RETURNED to Ocean County to calculate the penalty period as set forth above and to take necessary action to impose the penalty and/or recoup incorrectly paid benefits.



Valerie Harr, Director
Division of Medical Assistance
and Health Services