

This matter concerns Petitioner's application for nursing home benefits in June 2013. R-1 at 2. He is subject to a review of transfers of assets and transfers made in 2012 as being for less than fair market value. At issue are transfers Petitioner made to his sister G.V. Atlantic County imposed a penalty of three months and 19 days beginning July 1, 2013 through October 19, 2013. R-1 at 1.

Petitioner has two bank accounts, a TD Bank account in New Jersey and a United Bank account opened in February 2012 when he went to live with his sister G.V. in West Virginia. Petitioner contends that the West Virginia account was opened depositing his funds and funds from G.V. He claims that the transfers to G.V. from that account were the return of her funds. As evidence of this, Petitioner produced a 2005 settlement accounting from a personal injury lawsuit showing that G.V. netted \$17,147.47. P-2. The account was opened with a deposit of \$45,988.96. The deposit slip lists this amount as a check. R-1 at 9.

In late 2012, Petitioner purchased an irrevocable burial contract totaling \$20,000. One bank check dated November 19, 2102 was drawn from the United Bank account for \$11,172.00. R-1 at 10. The other remaining amount is shown on a receipt for \$8,827.20. R-1 at 11. Petitioner's sister, P.W., wrote a check dated November 31, 2012 [sic] from the TD Bank made out to G.V. for \$11,172.00. R-1 at 13. Finally, on December 5 and 11, 2012, amounts totaling \$17,095.36 were transferred to G.V., closing out the United Bank account.

The Initial Decision found that Petitioner had demonstrated that the \$17,095.36 transfer in December 2012 to close out the account was the return of G.V.'s money from the 2005 settlement. Also, the \$11,172.00 check from

Petitioner's TD account was reimbursing the United Bank account. As Petitioner was a signatory on both accounts, the decision concluded he was "merely paying funds from himself to himself." ID at 3. For the reasons that follow, I hereby REVERSE the Initial Decision and reinstate the \$28,267.36 penalty.

With regard to the \$17,095.36 transfer to G.V., there is no nexus between her 2005 lawsuit payment and the initial deposit into the account opened in February 2012. Petitioner's sister G.V. did not testify at the hearing and her written statement and the litigation accounting are hearsay and cannot be used to support a finding that the 2005 funds survived intact for over seven years to become part of the cash deposit. P-1. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness."

Under Petitioner's theory of the case the initial \$45,998.96 deposit was comprised of assets from him and his sister, G.V.¹ G.V., through a hearsay statement, claimed that she was entitled to \$17,095.36 and withdrew that amount between December 5 and December 11, 2012. Absent legally competent evidence tracing the funds' journey, the 2012 deposit into the joint account cannot be linked to the 2005 settlement. As mentioned in Respondent's exceptions, Petitioner was asked to produce the image of the deposit as the

¹ The United account was opened in February 2012. R-1 at 8. In March 2012, Petitioner transferred \$9,000 to his TD account in New Jersey, which indicates that the TD account was established prior to the move to West Virginia.

deposit slip indicated the \$45,988.96 was made by check.² No such evidence was presented in this matter.

Moreover, the Initial Decision's determination that the payments regarding the funeral trust were a "wash" as the \$11,172.00 was transferred between accounts controlled by Petitioner is not supported by the record. ID at 3. Petitioner's TD account did not reimburse his United Bank account. Rather the \$11,172.00 check was written to G.V. and, since the United Bank account was closed and a final statement was issued one December 11, 2012, the endorsement of the check on December 14, 2012 by G.V. could not have been deposited in the already closed United Bank account. R-1 at 13. Thus, there is no evidence that the \$11,172.00 was a transfer between accounts to an account controlled by Petitioner. Thus, the second \$11,172.00 check to G.V. was not the "repayment" of the funds but a transfer for less than fair market value.

THEREFORE, it is on this ^{15th} day of SEPTEMBER 2014

ORDERED:

That the Initial Decision is hereby REVERSED, and

That Petitioner's penalty of three months and nineteen days is reinstated.



Valerie Harr, Director
Division of Medical Assistance
and Health Services

² Pursuant to federal law, a bank "must file FinCEN Form 103 . . . for each deposit . . . transfer, by, through, or to the financial institution which involves a transaction in currency of more than \$10,000." This form, which must be retained by the bank for five years, could have shed light on the transaction. See [https:// www.ffiec.gov/bsa_aml_infobase/documents/forms/Form_104.pdf](https://www.ffiec.gov/bsa_aml_infobase/documents/forms/Form_104.pdf).