



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

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Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

August 19, 2022

Matthew Bravette, Esq.
18 Kings Hwy West
Haddonfield, NJ 08033

Re: FINAL AGENCY DECISION

Anne Viola

OAL Dkt No. HMA 08575-2021

Dear Sir or Madam

Enclosed is the Final Agency Decision rendered in the above captioned matter.

If you are dissatisfied with the decision, you have the right to seek judicial review by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, P.O. Box 006, Trenton, New Jersey 08625. A request for judicial review must be initiated within 45 days from the date of receipt of the decision. If you have any questions concerning an appeal to the Appellate Division, you should call (609) 815-2950.

Very truly yours,


Lisa N. Lackay, Esq.

Office of Legal & Regulatory Liaison
DMAHS

MVP:GO
Enclosure

C: County-Cumberland - Sandi Vanculin

a penalty of 67 days was assessed resulting from gifts made to Petitioner's daughter and grandson totaling \$24,468.43 during the look-back period.

The Initial Decision finds that the effective date of Petitioner's eligibility for benefits should have been June 1, 2021 rather than July 1, 2021, as determined by CCBSS. The Initial Decision additionally reverses the transfer penalty imposed, finding that Petitioner rebutted the presumption that the transfers were done for the purpose of qualifying for Medicaid. N.J.A.C. 10:71-4.10(j). Based upon my review of the record, I hereby ADOPT in part and REVERSE in part the findings and conclusions of the Administrative Law Judge (ALJ).

Petitioner, who suffered from Alzheimer's disease with dementia, began residing in a skilled nursing facility in January 2021. ID at 2. On April 30, 2021, Petitioner submitted her first application for Medicaid, seeking confirmation of Petitioner's spouse, J.V.'s, community spouse resource allowance. Ibid. On June 30, 2021, CCBSS advised that a spenddown of Petitioner and J.V.'s assets in the amount of \$81,226.04 needed to occur. P-2. J.V. spent down at least \$89,503.65 prior to Petitioner submitting a second application for Medicaid on June 30, 2021, seeking a June 1, 2021 effective date for benefits. P-3. As part of the spenddown, J.V. purchased an annuity from the Unity Financial Life Insurance Company (Unity) with a premium of \$63,386. P-4. The issue date of the annuity was May 20, 2021, with the first payment to begin on June 5, 2021, for a term of six months. Ibid. The parties agree that the annuity is Medicaid compliant. ID at 2. Part of the annuity contract contained a provision allowing a thirty-day right to examine the contract, which allowed J.V. to cancel the contract and be refunded all premiums paid under the contract. P-4. However, J.V. also signed an Immediate Irrevocable Election Form (IIEF), which allowed J.V. to voluntarily waive his thirty-day right to cancel the contract, causing the annuity to become immediately irrevocable. Ibid. On the basis of the thirty-day cancelation provision, CCBSS granted Petitioner Medicaid eligibility effective July 1, 2021.

The ALJ found that the IIEF rendered the annuity irrevocable and not subject to the thirty-day cancellation provision. I concur. The Commissioner of the New Jersey Department of Banking and Insurance (DOBI) specifically approved Unity's IIEF on January 10, 2019, allowing individuals to waive their right to cancel their annuity, pursuant to N.J.S.A. 17B:25-39, and thus, making the annuity irrevocable. R-6. The IIEF states "I elect to make this contract irrevocable from the issue date. I understand by making this election I give up all rights to cancel the contract and receive a return of premium under the Thirty Day Right to Examine Your contract provision of the annuity contract." P-4. Had J.V. not signed this IIEF, the July 1, 2021 effective date of eligibility would have been appropriate, as the annuity was revocable for a thirty-day period, allowing J.V. the ability to cancel the contract and receive a return of the premium that was paid. However, as he signed the IIEF on May 21, 2021, he waived his right to cancel the annuity and receive a return of the premium and neither Petitioner nor J.V. had access to the \$63,386 premium payment as of the issue date of the annuity, which was May 20, 2021. Accordingly, I FIND that the annuity became immediately irrevocable from the issue date.

In relation to the transfers at issue, totaling \$24,468.43, made for less than fair market value, J.V. alleges that the transfers were made to Petitioner's daughter and grandson as gifts. Specifically, he states that on November 6, 2017, he gave \$4,468.43 to his daughter, M.B., to purchase a car; on October 10, 2018, he gave \$10,000 to his grandson, E.V., as a wedding gift; on December 3, 2018, he gave \$2,500 as a wedding gift to M.B.; on July 24, 2019, he gave \$4,000 to E.V. towards the purchase of a home; and on October 16, 2020, he gave \$3,500 to E.V. to purchase a car. ID at 6. The ALJ found that Petitioner had established that these gifts were made solely for some other purpose than to qualify for Medicaid. I disagree.

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 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.

J.V. testified that while he cared for Petitioner prior to Petitioner being admitted into a skilled nursing facility, Petitioner was diagnosed with Alzheimer’s disease with dementia approximately six years before the hearing in this matter, which took place on May 13, 2022. ID at 5. Moreover, he testified that Petitioner “‘was gone’ three to four years ago—‘nobody was there.’” Ibid. He also testified that Petitioner didn’t know who J.V. was “for years” and she did not believe that their marital home was her home. Ibid. The transfers at issue took place between November 2017 and October 2020. According to J.V.’s testimony, Petitioner had already been diagnosed with Alzheimer’s disease with dementia at least one year prior to the first transfer being issued. Moreover, Petitioner entered into a nursing facility in

January 2021, three months after the last transfer at issue was made. With Petitioner's noted decline and increasing care needs that J.V. testified "almost drove [him] crazy," Medicaid eligibility most certainly would have been a consideration at the time of these transfers. While the funds transferred to Petitioner's daughter and grandson may have been used by them for a specific purpose, Petitioner has not shown that these transfers were made solely for another purpose than to establish Medicaid eligibility. In fact, none of the factors in N.J.A.C. 10:71-4.10(k) were demonstrated by Petitioner that might give rise to the transfers being exclusively for a purpose other than quality for Medicaid. Moreover, the Appellate Division of the Superior Court of New Jersey has upheld numerous Medicaid penalty cases that were either gifts or transfers for no fair market value. See V.S. vs. DMAHS and Gloucester County Board of Social Services, 2010 N.J. Super. Unpub. Lexis 868 (April 22, 2010); S.L. v. DMAHS and Essex County Board of Social Services, 2014 N.J. Super. Unpub. Lexis 2152 (September 2, 2014) and E.A. vs. DMAHS and Hunterdon County Board of Social Services, A-2669-13, Decided July 20, 2015. In upholding the transfer penalty the Court recognized that the desire of a parent to leave or give something to a child cannot "be subsidized by public funds." V.S. vs. DMAHS and Gloucester County Board of Social Services, 2010 N.J. Super. Unpub. Lexis 868 at 11 (April 22, 2010). Accordingly, I FIND that Petitioner has failed to rebut the presumption that the transfers at issue, totaling \$24,468.43, were made in order to establish Medicaid eligibility.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision as it relates to the effective date of Petitioner's eligibility for Medicaid and REVERSE the ALJ's recommended decision as it relates to the transfers at issue in this matter.

THEREFORE, it is on this 19th day of AUGUST 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services