



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

A.F.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
UNION COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 2986-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the case file and the documents in evidence. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is May 12, 2016 in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's Medicaid application for nursing home benefits. Petitioner, who lived with her husband, entered Palisades

Medical Center in March 2014. She was adjudicated incompetent in October 2014 and the Office of the Public Guardian (OPG) was appointed.¹ Hudson County requested a list of documents regarding Petitioner's finances including an explanation for checks and withdrawals from Petitioner's accounts, information regarding the transfer of her home in Weehawken to her son, Dr. J.R., and other financial transactions. Hudson County made three written requests for financial information.

The first request was dated December 4, 2014 and sent to Petitioner's son. Upon learning that the OPG had been appointed, Hudson County followed up with letters to the OPG on December 18, 2014 and January 22, 2015 requesting Petitioner's missing information. When the information was not provided, the application was denied by letter dated February 5, 2015. The missing information included the bank account statements for the prior five years with explanation of transactions, specific statements from Crown Banking, Wells Fargo and an annuity account, information regarding expenses as well as payment to caretakers and the status of rental apartments at the couple's residence.

The issue transmitted was whether Petitioner timely provided the necessary verifications for Hudson County to make an eligibility determination. Both the County Welfare Agency (CWA) and the applicant have responsibilities with regard to the application process. N.J.A.C. 10:71-2.2. Applicants must complete any forms required by the CWA; assist the CWA in securing evidence

¹ Petitioner's son hired an attorney who was permitted to appear, request adjournments and submit written arguments and post-hearing submissions to the OAL. The record contains no motion for or order granting intervention so it is unclear why he was permitted to act like a party. At most he is a witness in this matter.

that corroborates his or her statements; and promptly report any change affecting his or her circumstance. N.J.A.C. 10:71-2.2(e). The CWA exercises direct responsibility in the application process to inform applicants about the process, eligibility requirements and their right to a fair hearing; receive applications; assist applicants in exploring their eligibility; make known the appropriate resources and services; assure the prompt accurate submission of data; and promptly notify applicants of eligibility or ineligibility. N.J.A.C. 10:71-2.2(c) and (d). CWAs must determine eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days. N.J.A.C. 10:71-2.3(a); MedCom No. 10-09, and 42 CFR § 435.91. The time frame may be extended when “documented exceptional circumstances arise” preventing the processing of the application within the prescribed time limits. N.J.A.C. 10:71-2.3(c). The regulation does not require Hudson County to grant an extension beyond the designated time period when the delay is due to circumstances outside the control of both the applicant and the CWA. At best, an extension is permissible. N.J.A.C. 10:71-2.3; S.D. vs. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013). There is simply nothing in the record to demonstrate Petitioner asked for, or that Petitioner had exceptional circumstances warranting, additional time to provide the requested verifications. For example, the JPMorgan Chase account, which was referred to in a report filed in October 2014 for the guardianship proceeding, was not subpoenaed until May 2015. P-19.

Indeed the Initial Decision found that Petitioner’s son “failed to cooperate” with Hudson County “in a valid determination of” the Medicaid application. ID at 10. That finding should result in upholding Hudson County’s denial of the

application for failure to provide sufficient documentation to determine eligibility. However, the decision goes on to reverse the denial and approve Petitioner for Medicaid finding that “there was not Medicaid planning by A.F. or on her behalf.” ID at 10. For the reasons set forth below, I FIND no basis to make such a conclusion as Hudson County was not provided with the documents or explanations necessary to make such a determination.

The issue here is whether Petitioner provided sufficient evidence to make a determination if she was eligible for Medicaid benefits. The Initial Decision’s conclusions that Petitioner’s son “failed to provide this forum with any clear roadmap regarding the liquidation and use of the funds” and that his explanations “only raised more questions than [they] answered” are enough to support upholding the denial. ID at 10.

In order to reach a discussion of the transfer penalty, Petitioner must be found otherwise eligible; something Hudson County could not do with limited information presented with the Medicaid application. Rather, the Initial Decision makes findings regarding the transfers that are inapposite to the documents in this case. Petitioner’s bank accounts and home equity have been drained of several hundreds of thousands of dollars. Additionally, Petitioner and her husband transferred their home which has income producing rental property. Those funds would have been otherwise used to pay for Petitioner’s care and are subject to the transfer of assets rules.²

² Should Petitioner be found to be financially eligible upon a new application, two different analyses must occur. The couple’s income and resources are processed under the spousal impoverishment rules and those assets transferred are calculated to determine a penalty. See 42 U.S.C.A. § 1396-5(a) to (h); 42 U.S.C.A. § 1396p(c); N.J.A.C. 10:71-4.8; N.J.A.C. 10:71-5.7 and N.J.A.C. 10:71-4.10.

Even if there was sufficient documentation to provide Hudson County with an eligibility date so as to impose a transfer penalty, the finding that Petitioner did not participate in Medicaid planning in order to rebut the presumption that she did is not supported by the record. The Initial Decision described the son's testimony as "weav[ing] like a country road and in the end was nearly impossible to obtain a coherent and understandable story". ID at 5. Indeed the ALJ found that his testimony was given "almost no weight in reaching a decision." Yet despite this, the Initial Decision found that the son's actions do not constitute Medicaid planning. Such a conclusion flies in the face of the credibility determination.

Under Medicaid law, a resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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 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. Petitioner bears the burden of proving by convincing evidence that the assets were transferred exclusively for some other purpose. N.J.A.C. 10:71-4.10(j) and (l)(1). No such purpose was provided.

Federal law defines assets as including "any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action . . . (A) by the individual or such individual's spouse, (B) by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual . . . or (C) by any person, including a court or administrative body, acting at the direction or upon request of the individual[.]" 42 U.S.C.A. §1396p(h)(1). Thus, it makes no difference that Petitioner's son transferred some of the assets.³

However, the record shows that Petitioner took part in the mortgage and the transfer of the marital home. The Initial Decision's finding that Petitioner did not "participate in the clear liquidation of her personal or marital assets" and that she "was fully under the effects of dementia" when she transferred to home to her son is contradicted by her signature on the filed mortgage note and assignment of leases and rents dated May 9, 2013. Compare ID at 6 and 9 with P-16. Both of her signatures on these two separate legal documents were witnessed by an attorney-at-law who certified that he "first made known to them the contents" of both sets of legal documents. P-16. Additionally, the same attorney witnessed Petitioner's signature dated February 20, 2014 on the filed

³The applicant's child is often the instigator to transfer funds in anticipation of Medicaid eligibility rather than use the funds for medical care. See In re Keri, 181 N.J. 50 (2004), where a son sought the court's permission to transfer his incompetent mother's assets to himself in order to qualify her for Medicaid. While this conduct was allowed, the decision specifically noted that transfer of assets would impact on the mother's Medicaid eligibility and that the period of ineligibility had been considered in executing the Medicaid planning. Id. at 64.

deed that transferred the couple's home to her son. P-17. Moreover, Petitioner's husband's claim that he was not aware of the transfers made by his son is belied by these same legal documents which he signed as well as seven checks totaling \$104,000 made out to their son. P-6 through P-11.

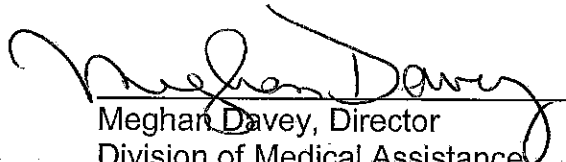
THEREFORE, it is on this ^{11th} day of MAY 2016

ORDERED:

That the Initial Decision is hereby REVERSED;

That Petitioner's application remains denied; and

That, upon reapplication, Hudson County shall take the above findings and the case record into consideration when considering any transfer penalties.


Meghan Davey, Director
Division of Medical Assistance
and Health Services