



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

A.M.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
CAMDEN COUNTY BOARD
OF SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 13679-15

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 entire contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is March 11, 2016, 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 the agency's receipt. The

Initial Decision was received on January 26, 2016. After reviewing the record, I concur with the ALJ's findings in the Initial Decision and hereby ADOPT them in their entirety.

I note that any transfer for less than fair market value during the look-back period is presumed to have been made for the purpose of establishing Medicaid eligibility. E.S. v. Division of Medical Assistance & Health Services, 412 N.J. Super. 340, 353 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). It is the applicant's burden to rebut this presumption 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).

From 2002 until 2014, Petitioner lived in an apartment on her son and daughter-in-law's property. In December 2014, Petitioner, at the age of ninety-nine, entered a nursing home and applied for Medicaid benefits. At issue in this case is the penalty imposed due to Petitioner's transfers totaling \$30,300 to her sons. Camden County imposed a 97-day period of ineligibility for the transfers. Petitioner's son and daughter-in-law contend that a portion of the transferred funds should not be subject to a penalty because they were used for Petitioner's benefit while she lived with them, to pay for damages (\$9400) to their apartment caused by Petitioner, and to replace a heater (\$5000). They also contend that Petitioner's transfers totaling \$8000 in 2010 and 2012 to her other son were to provide assistance with his financial and legal problems and were made while she was still living independently and had no plans to go into a nursing home.


As noted above, Petitioner bears the burden of proof to demonstrate that she received fair market value for the assets transferred. N.J.A.C. 10:71-4.1(j). In accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free

in the past are presumed to have been intended to be delivered without compensation. If payment is to be made there must a preexisting written agreement to pay for such services at a fair market rate. In this case, there was no agreement to compensate Petitioner's son and daughter-in-law for her care, or that Petitioner would be responsible for repairing the apartment or buying a new heater. Moreover, like the ALJ, I am not persuaded that Petitioner's mental incapacity in 2014 requiring skilled nursing care was completely unexpected. Indeed, Petitioner's daughter-in-law acknowledged at the hearing that she had moved into the apartment on their property in 2002 because she could no longer live on her own and was showing signs of dementia. As a result, like the ALJ, I am not persuaded that she sustained a sudden onset of a disability when she entered the nursing home in 2014.

THEREFORE, it is on this *3rd* day of March 2016,

ORDERED:

That the Initial Decision affirming the transfer penalty is hereby ADOPTED as the Final Decision.

  
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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services