



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

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

L.B.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 1203-2016
	:	
AND HEALTH SERVICES AND	:	
	:	
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 case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 12, 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 receipt. The Initial Decision in this matter was received on July 28, 2016.

This matter arises from denial of Petitioner's request for an undue hardship waiver. Petitioner has been in a nursing facility since 2012. As a result of filing for Medicaid benefits, Ocean County determined Petitioner was eligible as of February 1, 2014 and notified his temporary guardian that there was a transfer penalty amounting to \$25,900 or 82 days. That notification, which included a list of the transferred assets, was sent May 20, 2014 and provided instructions on how to rebut the presumption that the transfers were made in order to qualify for Medicaid or to request an undue hardship waiver of the penalty within 20 days of that letter. Petitioner's temporary guardian did not provide any information to rebut the presumption or request a waiver but did communicate the information to the nursing home and the Office of the Public Guardian (OPG) who was appointed on May 14, 2014.

In March 2015, the OPG, as a result of settling litigation between the OPG and the nursing home, requested a hardship waiver of the transfer penalty. In December 2015, Ocean County denied that request.

The Initial Decision found that the nearly year delay in responding to Ocean County's clear outline of Petitioner's options to challenge the transfer penalty was grounds for denying the hardship waiver. See N.J.A.C. 10:71-4.10(q). The case is analogous to C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015, where a 2008 notice of a transfer penalty was not appealed. In a second application filed in 2013, C.W. sought to modify the transfer penalty. The Appellate Court held that "C.W.'s proposed interpretation of the regulations distorts the fundamental facts at the heart of this case: she applied for benefits in 2008, was denied, had a penalty imposed for improperly transferring assets during the look-back period and elected not to challenge that determination. C.W. points

to no regulation or other authority, nor are we able to locate any, supporting the proposition she should be able to relitigate a previously-adjudicated and finalized penalty through a subsequent and wholly independent reapplication.” Id. at 13. Likewise, Petitioner’s failure to respond to or appeal the May 2014 penalty letter prevents her from doing so now.

The Initial Decision seems to reduce the transfer penalty through a partial reading of N.J.A.C. 10:71-4.10(c)2. However, the calculation of the penalty amount was not the issue that was appealed. Rather Petitioner specifically requested a waiver of the transfer penalty claiming he met the provisions of an undue hardship. See transmittal documents. Moreover, the regulation relied on by the Initial Decision fails to recognize that apportionment of a jointly-owned asset only occurs when ownership is with someone other than the individual’s spouse. Rather the next sentence of that regulation provides that “[i]f the individual is seeking institutional services or applying for an institutional level of services and has a spouse residing in the community, the UV [uncompensated value] considered shall be either spouse’s share of that value (see N.J.A.C. 10:71-4.8) (emphasis added).” Thus, transfers made by Petitioner’s spouse were properly included in the penalty and I hereby REVERSE that portion of the Initial Decision.


Based on my review of the record, I concur with the ALJ’s findings that the request for the undue hardship was properly denied but, for the reasons set forth above, reverse the finding reducing the transfer penalty.

THEREFORE, it is on this ^{29th} day of AUGUST 2016,

ORDERED:

That the Initial Decision with regard to dismissing Petitioner's request for a waiver of the transfer penalty is hereby ADOPTED; and

That the reduction of the transfer penalty is hereby REVERSED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services