



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Lt. Governor

MEGHAN DAVEY
Director

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

N.W.

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 13129-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is November 21, 2016 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty. Petitioner applied for Medicaid in October 2014. She had been living in a nursing home since

2011. In November 2013, her husband filed for a divorce and on August 14, 2014 the divorce was finalized with an incorporated property settlement agreement (PSA). The final judgment of divorce acknowledges that the PSA was entered into "voluntarily" but "no testimony with respect to the terms thereof or as to the adequacy or sufficiency of the provisions" of the agreement was taken by the judge. P-2.

By notice dated July 22, 2015, Monmouth County Board of Social Services found Petitioner otherwise eligible as of October 1, 2014 but, after assessing a transfer penalty of \$395,122.22, imposed a penalty until March 14, 2018.¹ The PSA was determined to have resulted in an inequitable split of the couple's marital assets and improperly excluded assets from distribution.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the 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.² N.J.A.C. 10:71-4.10 (c). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted "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).

¹ The Initial Decision states the penalty is at 1,280 days. It is actually 1,260 days. See R-7.

² Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

The practical effect of the Petitioner's acquiescence to the PSA is that the taxpayers will bear the burden of supporting Petitioner while she resides in the nursing home and receives medical assistance. If Petitioner had pursued her share of the assets, then those assets would have been available to provide for her maintenance and healthcare prior to burdening taxpayers. See Tannler v. DHSS, 211 Wis. 2d 179, 190-191, 564 N.W.2d 735 (1997); Estate of Michael DeMartino v. DMAHS, 373 N.J. Super. 210, 220, 224 (App. Div. 2004) (Testamentary trust created by will, equal to widower's elective share, viewed as a means to limit widower's ownership of his elective share and a transfer of resources); I.G. v. DMAHS, 386 N.J. Super. 282 (App. Div. 2006) (Widow's waiver of spousal share effectively transferred one-third of estate to a trust without compensation). The Initial Decision held that Petitioner failed to rebut the presumption or to establish that she received fair market value for the funds she transferred. I have reviewed the record and concur.

The PSA entered into by the Petitioner and her husband clearly acknowledges the need for Petitioner's long term care, which they both anticipate will be funded by the Medicaid program. As noted in the Initial Decision, the couple did not account for all assets in the PSA. The PSA sets the value of the marital home at \$335,000 based on an appraisal for August 2011, the month Petitioner entered the nursing home. The PSA states that the house is not a "liquid asset" and "should not be liquidated under the circumstances" and should be considered exempt from distribution as if Petitioner's husband was a community spouse. R-5 at 8. However, by the time Petitioner applied for Medicaid she was no longer married and there was no community spouse. Less than three months after the judgment of divorce, Petitioner's now ex-husband sold the home for a purchase price of \$470,000. The Initial Decision found that the home should

\$470,000. The Initial Decision found that the home should have been included in the distributions which would have entitled Petitioner to receive "approximately \$100,000 more that she did." ID at 22.


The Initial Decision examined the totality of the circumstances as well as relevant matrimonial and Medicaid law and found that "[t]he only conclusion that can be drawn is that the terms of the PSA were designed to make the petitioner eligible for Medicaid and to create a minimal transfer penalty." ID at 22. The evidence indicates that the financial accounting and division of assets was based on Petitioner's institutionalization and the need for Medicaid benefits. Petitioner failed to rebut the presumption that the transfer of assets was solely for a purpose other than applying for Medicaid nor did she present justification that a lesser penalty should be imposed.

Based on my review of the record, I concur with the Initial Decision and hereby affirm the imposition of a 1,260 day penalty.

THEREFORE, it is on this ^{17th} day of NOVEMBER 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED in its entirety.



Meghan Davey, Director
Division of Medical Assistance
and Health Services