



State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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KIM GUADAGNO  
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Director

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

PN.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 02975-16
	:	
AND HEALTH SERVICES AND	:	
	:	
UNION 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 and the documents in evidence. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is August 8, 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. This Initial Decision in this matter was received on June 28, 2016.

This matter arises from the imposition of a two month, twelve day transfer penalty in connection with Petitioner's November 2015 Medicaid application. On January 29, 2016, the Union County Board of Social Services (UCBSS) approved the application, effective December 1, 2015, but with a penalty due to the transfer of \$23,127.98. Petitioner appealed the denial and the matter was transmitted to the Office of Administrative Law (OAL). The matter was originally scheduled to be heard on April 8, 2016, but was adjourned twice at Petitioner's request before it was heard on June 16, 2016. In the interim, UCBSS issued a second letter, dated May 11, 2016, which reduced the above stated transfer penalty to \$15,020 and gave Petitioner appeal rights. This letter was appealed by the Petitioner and was transmitted to the OAL. It is currently scheduled for a hearing on July 29, 2016.

The May 11, 2016 letter was introduced as evidence during the OAL hearing. It was considered by the ALJ and the penalty reduced even further. However, there is nothing in the record explaining why the transfer penalty was reduced from \$23,127.98 to \$15,020, nor is there anything in the record to explain why \$2,450 of the remaining amount was subject to a transfer penalty, but \$2,570 was not subject to penalty.

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.<sup>1</sup> N.J.A.C. 10:71-4.10 (c). 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). Petitioner bears the burden of proof to demonstrate that she received fair market value for the assets transferred. N.J.A.C. 10:71-4.10(j). In the instant matter, the only issue fully addressed was the transfer of \$10,000 to Petitioner's children. Otherwise, the record does not support a conclusion that Petitioner received fair market value for goods or services, thereby warranting a reduction in the \$23,127.98 transfer penalty originally at issue, let alone a reduction in the \$15,020 transfer penalty.

THEREFORE, it is on this 18<sup>th</sup> day of JULY 2016,

ORDERED:

That the Initial Decision is ADOPTED in part with regard to the finding that Petitioner transferred \$10,000 to her children as a gift; and

That the Initial Decision is REVERSED with regard to the finding that \$2,450 in gifts were subject to a transfer penalty but \$2,570 in withdrawals were not subject to a transfer penalty; and

That the Initial Decision is hereby REMANDED to the Office of Administrative Law for additional testimony and documentary evidence regarding the reasons for the reduction of the \$23,127.98 transfer penalty issued on January 29, 2016 to \$15,020 and then again to \$12,450. Consequently, it may

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<sup>1</sup> 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).

be beneficial for the court to hear this matter and the currently pending matter concerning the May 11, 2016 notice of transfer penalty concurrently.



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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services