



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**

R.W.	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 00703-16
	:	
AND HEALTH SERVICES AND	:	
	:	
MONMOUTH COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

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. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision is September 1, 2016 in accordance with an Order of Extension. The Initial Decision was received on June 3, 2016.

This matter arises from the imposition of a 1000 day transfer penalty in connection with Petitioner's January 2014 Medicaid application. On October 30, 2015, the Monmouth County Board of Social Services (MCBSS) found Petitioner eligible for Medicaid benefits as of February 1, 2014 but instituted a 1000 day penalty due to the transfer of \$261,211.38. Petitioner appealed the denial and the matter was transmitted to the Office of Administrative Law (OAL).

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.¹ 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).

Petitioner and his wife, N.W., filed for divorce on November 5, 2012. A little more than two months later, Petitioner took up residence at the Imperial Healthcare nursing home. On September 24, 2013, Petitioner and N.W. entered into a property settlement agreement whereby Petitioner agreed to a distribution

¹ 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).

that left him with only \$33,983.30 of the couple's \$590,422.76 in assets. The property settlement agreement entered into by the Petitioner and N.W. acknowledges the need for Petitioner's long term care and contemplates the need for future long term custodial care, which Petitioner anticipates will be funded by the Medicaid program. Specifically, Petitioner's property settlement agreement, paragraph 6, which refers to Petitioner's waiver of alimony, reads:

The cost of Petitioner's care is currently being paid for privately. At such time as his assets are exhausted, he anticipates that he will be eligible for the federally funded program commonly known as Medicaid that will pay for his custodial care in the long term care facility in which he resides or in such other similar facility in which he may reside in the future.

Consequently, Petitioner is unable to establish that the transfer, pursuant to the property settlement agreement, was done exclusively for a purpose other than to qualify for Medicaid. Furthermore, Petitioner's decision to elect less than his share of the marital assets raises policy concerns similar to those occurring when a spouse refuses to elect against a deceased spouse's estate. The practical effect of the Petitioner's inaction is the same; taxpayers will bear the burden of supporting Petitioner while he resides in the nursing home and receives medical assistance. If Petitioner had not rejected his share of the marital assets, then those assets would have been available to provide for his maintenance and healthcare without burdening taxpayers. See Tannler v. DHSS, 211 Wis. 2d 179, 190-191, 564 N.W.2d 735 (1997).

The evidence indicates that the financial division of assets was based on Petitioner's institutionalization and anticipated Medicaid benefits. The courts have held that when spouses use or fail to use statutes that are designed to prevent impoverishment so as to qualify for Medicaid, a transfer penalty should

occur. Accordingly, when examining the division of property, an applicant's failure to assert their right to equitable distribution is subject to a transfer penalty. 42 U.S.C. § 1396p(c)(3) and N.J.A.C. 10:71-4.10(b)3. Moreover, I note that the Appellate Division has recently decided a similar case and upheld DMAHS' determination where the property settlement "was an undisguised attempt to circumvent Medicaid regulations." H.K. v. DMAHS and Cape May County Board of Social Services, 379 N.J. Super. 321 (App. Div. 2005). See also, S.G. v. DMAHS, 95 N.J.A.R. 2d (HMA) 33 (1994), affirmed 1995 WL 374666 (App. Div. March 23, 1995) (a divorce judgment does not bar imposing a period of ineligibility due to transfers of assets through the Judgment of Divorce).

Similarly, a Medicaid applicant or recipient cannot be disinherited by the deceased spouse and must avail themselves of statutes that permit an elective share of the estate. See Tannler v. DHSS, 211 Wis. 2d 179, 190-191, 564 N.W.2d 735 (1997), and similar determinations in 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.); Matter of Estate of Dionisio v. Westchester County Dept. of Social Servs., 244 App. Div. 2d 483, 665 N.Y.S.2d 904 (1997), leave to appeal denied, 91 N.Y.2d 810 (1998) (Widow's waiver of her marital rights to a portion of her husband's estate was a transfer of resources for purpose of qualifying for medical assistance.); 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.)

After reviewing the record, I concur with the ALJ's findings in the Initial Decision and hereby ADOPT them in their entirety. N.J.A.C. 10:71-4.10 requires a penalty when assets have been transferred during the look back period. Petitioner offered no corroborating evidence to establish that these transfers were done for a purpose other than to qualify for Medicaid benefits. In fact, the evidence presented shows that Medicaid benefits were affirmatively contemplated as part of the property settlement agreement.

THEREFORE, it is on this 26th day of AUGUST 2016,

ORDERED:

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


Meghan Davey, Director
Division of Medical Assistance
and Health Services