

State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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MEGHAN DAVEY
Director

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

S.L.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 02613-16
	:	
AND HEALTH SERVICES AND	:	
	:	
CAPE MAY 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 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 July 25, 2016 in accordance with an Order of Extension. The Initial Decision in this matter was received on April 26, 2016.

At issue is a 20 day penalty imposed due to Petitioner's transfers totaling \$6,364.78. 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). Here, Petitioner is seeking to show that she received fair market value for the transferred assets by asserting that the transfers to her daughter were compensation for caregiving services.

Claims that transfers were payment for caregiving services provided in the past by family members are unsupported by the record. 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. No such document was presented here.

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).

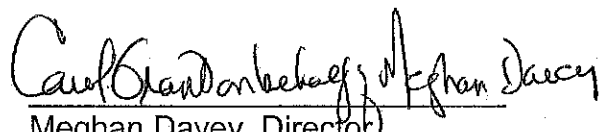
Additionally, I am troubled by the ALJ's comment that \$3,807.50 of the original \$10,172.28 transfer penalty was forgiven because it was repaid to Petitioner. Any reduction of the transferred funds is predicated on whether "a satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. §1396p(c)(2)(C) (emphasis added). Partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. C.W. vs. DMAHS and Union County Board of Social Services, No. A-2352-13 (App. Div. August 31, 2015); Medicaid Communications (Med-Comms) 10-02 and 10-06. Therefore, any reduction of the penalty, not within the parameters set forth above, would be in violation of 42 U.S.C. § 1396p(c)(2)(C).

THEREFORE, it is on this *8th* day of JULY 2016,

ORDERED:

That the Initial Decision affirming the transfer penalty of \$6,364.78 is hereby ADOPTED; and

That the matter is RETURNED to the County for the limited purpose of reevaluating the remaining \$3,807.50 in accordance with this Final Agency Decision.


Meghan Davey, Director
Division of Medical Assistance
and Health Services