



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

B.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

CAPE MAY COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 5752-2017

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 20, 2017 in accordance with an Order of Extension.

The matter arises regarding Petitioner's sale of her home to her daughter. Petitioner applied for Medicaid benefits in January 2017. By notice dated April 12,

2017, Petitioner was found eligible as of January 1, 2017 but was assessed a transfer penalty of \$140,786 or fourteen months and three days. ID at 3. At issue is the transfer of her home to her daughter in November 2016. There was no settlement sheet or other financial document recording the terms of the sale. ID at 2. The deed states Petitioner received \$205,000. There was no appraisal done prior to the sale. At the hearing Petitioner argued that a subsequent tax appeal filed by her daughter, changed the value of the property price and that her home sold for was fair market value. Cape May County used the tax assessed value pursuant to N.J.A.C. 10:71-4.1(d)(1)(iv) and determined that the sale price did not reflect fair market value.

The Initial Decision found that the penalty period was properly assessed. While I agree with the basic calculations, I FIND that the funds Petitioner received from her daughter that were identified as the proceeds from the sale of the house were not used in calculating the penalty. Thus, I hereby ~~MODIFY the Initial Decision.~~

The record contains no assessment of the property contemporaneous to the November 2016 sale. Petitioner's daughter's calculation to justify the \$205,000 sales price used construction estimates "to make this property marketable." R-1 at 27. The question is the fair market value of the property not upgrades needed to make it marketable. Even the figures presented by Petitioner's daughter do not equal \$205,000 and are based on faulty premises. She begins with a tax value of \$367,000 which is reduced to \$238,000 with construction estimates. These contractor estimates include installing granite counter tops in the kitchen and "barn-door style doors in between the family room and den." P-1. These do not appear to be basic improvements to make the home livable but rather upgrades to flip the property. In trying to deduct what would be the realtor's commission, Petitioner's daughter uses 6% of \$367,000. This contradicts

her contention that she could only sell the property for \$205,000 as realtor's commissions are based on the sale price not on the tax value.

Petitioner's argument that an after-the-fact tax appeal should affect the November 2016 transaction is not supported by the regulation. Fair market value is "an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred." N.J.A.C. 10:71-4.10(b)(6) (emphasis added). At the time of the transfer, Petitioner had neither requested nor received a revision of the tax assessed value of her home. Rather Cape May determined the equity value of real property as "the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any..." N.J.A.C. 10:71-4.1(d)(1)(iv). The regulation is very specific, it states that "[t]he equity value of real property is" based on this calculation and does not leave room for interpretation. While the tax assessed value of a home is not necessarily an accurate reflection of the price that the property "can reasonably be expected to sell for on the open market in the particular geographic area" absent credible independent evidence, the regulation provides for a uniform determination of the value of property, which can be a subjective art. N.J.A.C. 10:71-4.1(d). See also N.J.A.C. 10:71-4.7(b). Thus, I FIND that Cape May used the proper assessment to determine the penalty.

Based on the figures in the record, the equalized value of \$371,636 minus the mortgage payoff of \$230,850 would result in a penalty of \$140,786. However, Petitioner received a deposit of \$34,484.07 in December 2016 that represented the "net proceeds from the sale of the property." ID at 3. As such, the transferred amount should be reduced to \$106,301.93 or 319 day penalty.

THEREFORE, it is on this ^{7th}~~6th~~ day of OCTOBER 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to upholding the penalty;

That the Initial Decision is hereby MODIFIED to reflect a transfer penalty of \$106,301.93; and

That Cape May County shall adjust the penalty length accordingly.



Meghan Davey, Director
Division of Medical Assistance
and Health Services