



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

E.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
UNION COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 7380-2016

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. Petitioner filed exceptions in this case. Procedurally, the time period for the Agency Head to file a Final Decision is September 14, 2107 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty. Petitioner entered the nursing home in May 2015 at the age of 103. Union County processed her

application filed in September 2015 and determined she was eligible as of August 2015 but subject to a penalty of \$111,051.01. Additional documentation showed that Petitioner had received fair market value for approximately \$26,000 and reduced the penalty to \$84,702.20. ID at 2. This penalty period ended on April 29, 2016. Petitioner died on June 19, 2016.¹

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).

The Initial Decision held that Petitioner had provided adequate proof that her funds had been used to pay for home health services for 24 weeks at a rate of \$150 per week. This rate is less than the services she purchased from a licensed agency. For example, the check dated March 22, 2014 indicates for approximately nine weeks,

¹ Petitioner’s death in June 2016 terminated her Power of Attorney’s authority to act on her behalf. N.J.S.A. 46:2B-8.5(a). However, the Initial Decision states that Petitioner’s niece had the ability to “authoriz[e] Attorney Pendergast to continue to prosecute the within appeal.” There is no evidence an estate has been opened. As such, there is no one authorized to continue this appeal.

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

Petitioner paid the agency \$1,685. P-1. This comes out to around \$187 a week. However, there is no evidence that this care continued or would be permitted to continue after Petitioner entered the nursing home in May 2015.

Petitioner never provided bank records of the account that Petitioner's niece allegedly opened to manage her funds. She never provided monthly balances or documentation of the withdrawals claimed to be for Petitioner's benefit. The three page summary of transactions and the vague affidavit are not sufficient to overcome the presumption that the transfers were done in order to qualify for Medicaid.

In exceptions, Petitioner continues to argue that she was not contemplating Medicaid. At the time Petitioner applied for Medicaid, she was 103 years old. The five-year lookback began when she was 98 years old. She had been using a Home Health agency to provide care for her since at least December 2013. P-1. She then privately purchased home health services through an individual beginning in December 2015. The argument that she was independent and healthy until she broke her hip in May 2015 is countered by Petitioner's own proffer that her niece had managed Petitioner's funds since 2012.

Furthermore, as noted by the Initial Decision, there are no receipts or proof of the costs expended by the caregiver. ID at 3. Nor is there any basis for the claim that the caregiver continued to provide services four hours a day, three times a week while Petitioner was residing in the nursing home. Those services are provided by and included in the nursing home costs.

Based on my review of the record, I concur with the Initial Decision that Petitioner failed to demonstrate that she transferred \$81,102.20 solely for a purpose other qualifying for Medicaid. Union County shall assess the penalty based on that amount.

THEREFORE, it is on this 7th day of SEPTEMBER,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services