



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.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 04361-16
	:	
AND HEALTH SERVICES AND	:	
	:	
CAMDEN 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 and Petitioner's exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is

February 2, 2017, in accordance with an Order of Extension. The Initial Decision in this matter was received on November 4, 2016.

At issue is a six month, six day penalty imposed due to Petitioner's transfers totaling \$59,782.57. 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).

During the five year look-back period, from May 2009 to May 2014, several transfers totaling \$59,782.57 were made from Petitioner's and Petitioner's son's (M.M.), jointly held account (Joint Account) to a separate account held by M.M. and another individual. M.M. was able to that he deposited \$46,867.26 into the Joint Account during the look-back period. M.M. stated that these funds were not repayment for money transferred out of the Joint Account but rather independent contributions to the Joint Account.

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).

However, there was still an unaccounted balance of \$12,915.31. In response, M.M. claimed that an additional \$14,555 in transfers made from his account to the Joint Account coupled with transfers from another account he shared with his brother², were evidence that the funds were his and not Petitioner's. M.M. also argues that the amount of money deposited exceeds the amount of money transferred out of the Joint Account, and therefore the account was made whole. As a result, M.M. argues that no transfer penalty should be imposed against Petitioner.

The Appellate Court has stated that "joint accounts are sometimes used as 'convenience accounts,' so that another party may more easily handle the financial affairs of the true owner of the asset." Bronson v. Bronson, 218 N.J.Super. 389, 394 (App.Div.1987). For this reason, M.M. claims to have set up the Joint Account, containing all of Petitioner's assets, when his mother became physically and mentally disabled and needed assisted living. Indeed, under the Multiple-Party Deposit Account Act (MPDA), while the parties are alive:

Unless a contrary intent is manifested by the terms of the contract, or the deposit agreement, or there is other clear and convincing evidence of a different intent at the time the account is created:

a. A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit. In the absence of proof of net contributions, the account belongs in equal shares to all parties having present right of withdrawal. This subsection shall not be construed to affect the right of the court to effectuate an equitable distribution of property between the parties in an action for divorce pursuant to N.J.S. 2A:34-23.

N.J.S.A. 17:16l-4.

² All referenced transfers occurred prior to the May 2009-2014 look-back period.

As the law above shows and absent any evidence from the financial institutions, Petitioner would have had unrestricted access to the funds and the account is considered her asset. See also POMS SI 01140.205 "When a claimant or recipient co-owns an account with someone who is not eligible for SSI benefits, we assume that all the funds in the account belong to the SSI claimant or recipient."

There are other ways to demonstrate ownership. For example, Internal Revenue Service Publication 17 instructs that:

If the funds in a joint account belong to one person, list that person's name first on the account and give that person's SSN to the payer. (For information on who owns the funds in a joint account, see Joint accounts, later.) If the joint account contains combined funds, give the SSN of the person whose name is listed first on the account. This is because only one name and SSN can be shown on Form 1099.

These rules apply both to joint ownership by a married couple and to joint ownership by other individuals. **For example, if you open a joint savings account with your child using funds belonging to the child, list the child's name first on the account and give the child's SSN.** (emphasis added).

http://www.irs.gov/publications/p17/ch07.html#en_US_2013_publink10001

71410.

If the funds in these accounts belonged to Petitioner's son, M.M.'s name should appear first on all the accounts and would be the reporting Social Security number for tax purposes. Instead, the account statements ending in #6375 show Petitioner's name first. Furthermore, Petitioner used the account to deposit her Social Security checks and withdrew funds for her own expenses. There is no evidence that the funds transferred out of the Joint Account did not belong to Petitioner. In the absence of evidence to the contrary, M.M.'s deposits were not

merely contributions but rather repayments for the funds transferred from the Joint Account to his personal account.

Consequently, I agree with the Administrative Law Judge that the Petitioner has failed to meet her burden of proof that the resources were transferred for some reason other than to qualify for Medicaid. 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). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. Med-Com 10-06.

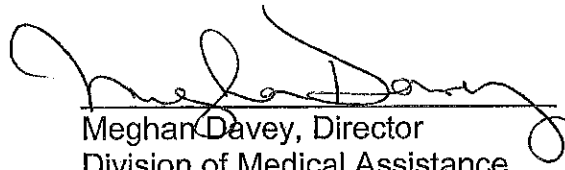
Petitioner transferred \$59,782.57 to M.M.'s account. M.M. was able to show that \$46,867.26 was returned to Petitioner. However, there remains an outstanding balance of \$12,915.31. The deposits made by M.M. to the Joint Account prior to the transfers out of the account are not repayment for those transfers. As a result, Petitioner did not receive the entire \$59,783 back from M.M. All of the assets transferred into M.M.'s account were not returned to Petitioner prior to her death and the penalty period for the full amount of \$59,783 stands.

After reviewing the record, I concur with the ALJ's findings in the Initial Decision and hereby ADOPT them in their entirety.

THEREFORE, it is on this 11th day of JANUARY 2017,

ORDERED:

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



Meghan Davey, Director
Division of Medical Assistance
and Health Services
