



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

L.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

CAMDEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 16647-2016

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. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Decision is May 18, 2017 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty of \$140,863.75. Petitioner first applied in January 2015. Camden County determined that the couple had \$1,020,092.62 in countable resources at the time she entered the nursing home in September 2013. That application was denied due to failure to provide documentation. The matter was docketed under HMA 1365-2015 and the denial was upheld through the Final Agency Decision signed on February 9, 2016. A second application was filed but denied due to excess resources. No fair hearing was requested.

Petitioner reapplied for the third time in July 2016. She was found otherwise eligible as of August 1, 2016. Camden County found that Petitioner and her husband had transferred \$140,863.75 in assets and imposed a penalty of 423 days. Petitioner requested a hearing and claimed that a portion of the transfer was to pay her son rent.

Since selling their marital home in 2006, Petitioner and her husband lived in a home owned by their son. In August 2014, Petitioner's husband purchased the house outright for \$205,000. P-7. There was no written rental agreement between the couple and their son. However, there were numerous transfers of various amounts and frequency to the son or the mortgage company that Petitioner claims was based on an oral rental agreement. ID at 3. The Initial Decision found that the oral rental agreement can be validated through the testimony and the payments to Petitioner's son as evidenced on his federal tax returns. As such the Initial Decision modifies the transfer penalty by finding that Petitioner had established that \$89,560 was transferred for another purpose, namely the payment of rent. For the reasons that follow, I hereby REVERSE the Initial Decision.

There is a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. N.J.A.C.

10:71-4.10(i). The applicant "may rebut the presumption that assets were transferred to establish Medicaid eligibility 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 burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide that, "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted." N.J.A.C. 10:71-4.10(l)2. I FIND that the record does not show Petitioner has rebutted the presumption.

The cases cited in the Initial Decision regarding oral rental agreement are based on dispute between the parties to the agreement. That is not the case here. The parties to the oral agreement are seeking to have the agreement validated so as to obtain Medicaid benefits.¹ To that end, Petitioner produced bank statements and tax records to support that there was a legitimate debt to her son. However, absent a written agreement, the evidence does not show that Petitioner had a valid rental agreement.

Even when there is a written document, courts have found that, for Medicaid purposes, it is not the title of an instrument that determines the true nature of the instrument. See Johnson v. Guhl, 91 F.Supp. 2d, 754, 778 (D.N.J. 2000). Rather it is the facts and circumstances of the transaction that determine what the instrument is.

Where...the transactions occur between related entities rather than at arms' length, they are subject to particular scrutiny because the control element suggests the opportunity to contrive a fictional debt....Thus, a transaction

¹ Even assuming the case law applies to the circumstances of this case, the finding that Petitioner had demonstrated "a valid and binding oral contract for lease of real property by agreeing on the essential terms of the agreement" is not supported by the record. ID at 7. The alleged agreed upon rent of \$1,800 was never paid in that amount; there is no agreement as to length of the lease; nor is there proof that they agreed to the frequency of payments.

must be measured against an objective test of economic reality and characterized as a bona fide loan only if its intrinsic economic nature is that of a genuine indebtedness.

[Geftman v. Comm'r of IRS, 154 F.3d 61, 68 (3d Cir. 1998)].

Petitioner did not have an arm's length relationship with her son when the parties contrived the rental arrangement. With over \$1 million dollars in assets, Petitioner had ample resources to pay for or purchase a residence. Instead, Petitioner's son testified that his parents agreed to pay him "approximately \$1,800 a month." ID at 3. There is no evidence that Petitioner ever paid that amount. Each of the purported rent payments to the son was for a higher amount. R-5. Moreover, the tax returns from Petitioner's son do not support the finding that the transfers were rent.

The ALJ noted "there is no law against an individual claiming more rental income on his tax returned than he actually received." ID at 8. However, the converse, or claiming less rental income than actually received, is against the law. See <https://www.irs.gov/taxtopics/tc414.html>. The record shows that Petitioner's son claimed less rental income for tax years 2010 and 2011 than he now says his father paid him. In 2010 and 2011, Petitioner made electronic transfers to the son's mortgage company which the son says were "in lieu of the rent payment." ID at 3. In 2010, those payments totaled \$24,720 or (\$2,060 x 12). R-5 at 31. The son reported rental income of \$24,480. P-5. In 2011, Petitioner again paid \$2,060 electronically for 8 months for a total of \$16,480. R-5 at 31. His son reported total rental income of \$14,400 on his tax returns or \$2,080 less than he now claims his father paid. P-5. However, he stated that after August 2011 "the payments were \$5,000 approximately every other week (R-5 at 30) were also rent payments." ID at 3-4. There is only one payment of \$5,000 after August 2011 listed on R-5 at 30. (There are three payments of \$2,500 on August 24,

2011 which are not explained and not considered as rent for this purposes of this discussion.) This payment for \$5,000 on December 19, 2011 is also not included on the rental payments claimed on the federal taxes.

In applying the statement that, after August 2011, the \$5,000 checks represented rental payments, Petitioner's son 2012 tax returns again underreports what he is now claiming to be rental income. In 2012, Petitioner made 7 payments of \$5,000 to his son. He also made three other payments for less than \$5,000. If the son's statement at the hearing is to be believed and those seven \$5,000 payments constituted rent, Petitioner paid \$35,000 in rent or \$2,916 a month in rent. Petitioner's son claimed \$11,000 less or \$24,000 in rental income on his tax returns for 2012. P-5.


Petitioner's claim that the transfers were rent is simply not supported by the record. As neither Petitioner nor her husband testified, it is up to their son to provide evidence of the essential terms of the oral rental agreement. The terms of the agreement are mercurial. There were no payments of the agreed upon amount of \$1,800. The payments ranged from \$2,060 to \$5,000 and exceeded the amounts reported as rental income on the tax returns. It is Petitioner's burden to demonstrate the purpose of the transfer was for another purpose. There is simply insufficient credible evidence to support Petitioner's assertion.

For the reasons set forth above, I hereby REVERSE the reduction of the penalty in the Initial Decision and FIND that Camden County properly assessed the 423 day penalty based on transfers totaling \$140,863.75.

THEREFORE, it is on this ^{17th} day of MAY 2017,

ORDERED:

That the Initial Decision is hereby REVERSED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services