

This matter arises from denial of Petitioner's two most recent Medicaid applications and the subsequent denial of the request for an undue hardship waiver as a penalty was assessed with Petitioner's fourth application. Petitioner has been in a nursing facility since 2013. She filed three applications for Medicaid benefits that were each denied for failure to provide verification documentation.¹ On the fourth application, Petitioner finally provided the needed information. However, there was \$143,847.84 in transfers that were subject to penalty. Ocean County found Petitioner eligible as of March 1, 2016 but under a transfer penalty until May 6, 2017.

A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "A transfer penalty is the delay in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period." E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). "[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." Ibid. Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." Ibid.

Petitioner contends she was entitled to a waiver of the transfer penalty in the amount of \$143,847.84 due to fulfillment of the requirements for an undue hardship. N.J.A.C. 10:71-4.10q(1) provides that a waiver of the transfer penalty may be granted when :

¹ The first application was appealed but was withdrawn in January 2016. It is not part of this matter.

- i. The application of the transfer of assets provisions would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered. Undue hardship may also exist when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life; and
- ii. The applicant/beneficiary can irrefutably demonstrate the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred.

The Initial Decision concluded that Petitioner had not demonstrated that she met the two prongs needed for a waiver of the transfer penalty. Since the regulation requires that both conditions be met, failing to meet either is sufficient to deny the waiver request. Based on my review of the record, I concur with this conclusion.

Petitioner's attempt to show that the penalty has put her health or life at risk is not based on fact or law. Petitioner presented a June 29, 2016 letter from Whiting Nursing Home that she would be involuntarily transferred to her daughter's home as of July 29, 2016 due to an overdue bill of \$242,829.36. Since Ocean County did not issue the letter informing her of the transfer penalty until July 12, 2016, the nursing home's letter cannot be based on the imposition of the transfer penalty as it had not occurred at the time the June 29, 2016 letter was sent. Additionally, the letter states that Petitioner could remain if she is able to establish Medicaid eligibility from January 2015. Counsel for the nursing home stated in exceptions that this letter shows that Petitioner "has no ability to compensate Whiting for the deficit in Medicaid benefit payments caused by the penalty period." It is Petitioner's failure to establish Medicaid eligibility from January 2015 to March 2016 that caused the deficit in the June 2016 letter. That failure was compounded by Whiting and its attorneys failure to provide the "the specific and proper

requests made by [Ocean County] for financial verification” on those applications. ID at 14. The Initial Decision found that the prior applications were correctly denied and the exceptions, which are nearly identical to the P-1 and P-2 submitted below, do not counter those findings.

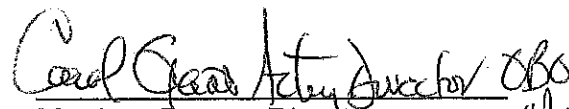
Additionally, it is disingenuous for Whiting’s attorneys to argue that Petitioner is at risk of discharge from their own facility or that she would “have no place to live, no one to monitor her medical condition.” Exceptions at 5. A nursing home cannot discharge Petitioner in the manner described as it violates both federal and state law. See N.J.A.C. 8:85-1.10 and 42 C.F.R. § 483.15. Moreover, Petitioner is currently covered by Medicaid so that her nursing home services are secured. With regard to Whiting’s counsel’s opinion regarding a legal basis to seek recovery from Petitioner’s Power of Attorney, it is unclear if this is legal advice. Whiting’s counsel has set forth that they represent the nursing home; not Petitioner. See R.P. v. DMAHS and Bergen County Board of Social Services, A-06148-11, slip op. at 6, (App. Div. Oct. 22, 2013).

Based on my review of the record and the applicable law, I concur with the ALJ’s findings and hereby ADOPT the Initial Decision in its entirety.

THEREFORE, it is on this ^{22nd} day of DECEMBER 2017

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services 