



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**

M.T.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BURLINGTON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 13332-16

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. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Decision is February 19, 2017, in

accordance with an Order of Extension. The Initial Decision was received on November 21, 2016.

This matter arises from the Atlantic County Board of Social Services' (ACBSS) imposition of a 412 day penalty period due to the transfer of Petitioner's residence for less than fair market value. 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).

Petitioner's stepson and P.O.A., R.C., engaged a real estate agent to sell Petitioner's home in Hammonton, New Jersey. Petitioner's home was originally listed for \$189,900. The tax assessed value was \$220,500 and ACBSS utilized the 2015 Equalized Valuation Ratio of 1.0147 to adjust the fair market value to \$217,305. The listing price of the home was eventually reduced to \$80,000. On December 16, 2015, ACBSS notified Petitioner that the significant reduction

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).

could result in a transfer penalty. The home ultimately sold for \$80,000 and ACBSS imposed the 412 day penalty.

R.C. explained the reduced price by testifying that the heating and septic systems were inoperable, the bathrooms were in disrepair and mold was present throughout the house. He also testified that when the property was initially listed there was a billboard on the property that could potentially increase the value. However, after the property was listed, it was discovered that Petitioner signed a thirty year lease to a third party, rendering the billboard unusable to the subsequent property owner until 2044. Additionally, R.C.'s realtor testified that the property failed building, electric, plumbing and fire inspections. In support of these statements Petitioner supplied a single sheet of paper that does not identify the municipality, company or other individual who conducted the inspection, and no one appeared to testify regarding this business record.

Even if we assume the condition of the house warranted a reduction in the sale price of the home, it is unclear from the record what value the billboard brings to the property. R.C. testified that Petitioner signed a thirty year lease to a third party. Typically, companies that own billboards on private property pay the landowner monthly rent for the use of the land where the billboard is located. The record below assumes the billboard is located on the property at issue, but since no lease or deed was presented it is unclear exactly where the billboard sits. Is the billboard located on the property or has the property been divided into two separate lots? If it is still located on the property, does Petitioner hold an easement? If he does not hold an easement, how does he retain ownership of the billboard? Why was the lease not assigned to the current property owner?


Since no lease or deed was presented at the hearing below, these questions cannot be answered. Consequently, the fair market value of the property cannot be determined.

THEREFORE, it is on this 15th day of FEBRUARY 2017,

ORDERED:

That the Initial Decision is REVERSED; and

That the matter is REMANDED to the Office of Administrative Law for additional testimony and documentary evidence regarding the certificate of occupancy inspection for the Hammonton property, where the billboard is located, Petitioner's ownership of the billboard and copies of the billboard lease and current property deed.


Meghan Davey, Director
Division of Medical Assistance
and Health Services