



State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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ELIZABETH CONNOLLY  
Acting Commissioner

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

MEGHAN DAVEY  
Director

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES

R.D.

PETITIONER,

v.

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

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 06745-16

As the Director of the Division of Medical Assistance and Health Services,  
I have reviewed the record in this case, consisting of the Initial Decision, the

documents in evidence and the entire contents of the OAL file. Neither Party filed Exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 27, 2017 in accordance with an Order of Extension. The Initial Decision in this case was received on January 27, 2017.

The matter arises from Petitioner's January 8, 2016 Medicaid application. At issue is a \$247,835.72 transfer to Petitioner's son, J.D. The transfer consisted of \$224,074.72 from the sale of Petitioner's home, as well as other funds belonging to her. J.D. claimed \$50,000 was used for repairs to Petitioner's home and \$49,500 represented rent paid by Petitioner to J.D. No credible verification was submitted to support these claims. Petitioner provided no receipts for work performed to repair her home and the lease provided was signed but not dated. There is no verification, either by lease or by bank statement, that the agreement to pay rent was signed in anticipation of Petitioner becoming a tenant of J.D., rather than to account for money transferred after Petitioner had already begun to reside in a facility.

Claims that transfers are payment for services, in this case housing, provided in the past by family members are unsupported by the record. In accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free in the past are presumed to have been intended to be delivered without compensation. If payment is to be made there must be a preexisting written agreement to pay for such services at a fair market rate. No such document existed here.

Furthermore, while J.D. has established that he used \$177,952 to pay for Petitioner's care does not satisfy the federal statute. The use of funds transferred from the Petitioner's account to another's account, in this case J.D.,

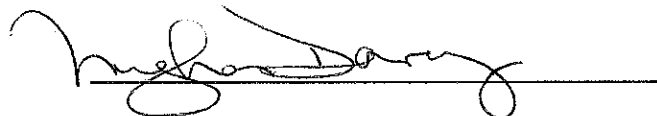
for the Petitioner's care does not constitute a return to the individual, even a partial one. Here, however, the record assumes at least a partial return based on the amount used for Petitioner's care. Nonetheless, a reduction in the transfer penalty based on a partial return of transferred assets is not permitted. 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. Medicaid Communications (Med-Comms) 10-02 and 10-06.

It is clear that Petitioner did not receive the entire \$247,835.72 back from her son and the penalty period stands. Based on my review of the record and for the reasons set forth above, I hereby ADOPT the Initial Decision and uphold the transfer penalty.

THEREFORE, it is on this <sup>3rd</sup> day of APRIL 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED in its entirety.



Meghan Davey, Director  
Division of Medical Assistance  
and Health Services