



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

S.P.,
PETITIONER,
V.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES &
OCEAN COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 911-2016

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 21, 2017, in accordance with an Order of Extension.

This matter concerns the sale of Petitioner's home in 2014. At the time of the sale, Petitioner owned the home with his two sons. The two sons had a subordinate interest to Petitioner's life estate in the property. Petitioner had entered the nursing

home August 2013.<sup>1</sup> Petitioner filed another application in October 2015. By that time Petitioner's home had been sold for \$110,000 in January 2014. Petitioner received no funds from the sale. Ocean County assessed a \$31,043.10 penalty based on the value of his life estate at the time of the sale. That penalty ran from October 1, 2015 through January 1, 2016. Petitioner appealed the transfer penalty.

The Initial Decision found that the life estate had no value and that the transfer penalty should be modified to three days. Based on the record before me and the applicable law, I hereby REVERSE the Initial Decision and reinstate the transfer penalty from October 1, 2015 through January 1, 2016.

It is a long-standing principle that life estates have value. See, e.g., In re Estate of Romnes, 79 N.J. 139, 150 n.4 (1979); In re Estate of Lichtenstein, 52 N.J. 553, 563 (1968); Neiman v. Hurff, 11 N.J. 55, 62-63 (1952); Camden v. Williams, 61 N.J.L. 646, 647 (N.J. 1898). The sale of the home in January 2014 required the extinguishment of Petitioner's life estate in the property in order to transfer clear title to the new owner. A life estate has a value based on the tenant's age at the time of sale to a third party and results in a transfer if the life tenant is not compensated from the proceeds. See L.M. v. DMAHS and ACBSS, OAL DKT..NO. HMA 12300-06, decided March 2, 2007 (upholding the transfer penalty where the Medicaid applicant received less than the value of life estate at time of sale). Other cases have reached the same conclusion and imposed a transfer penalty when the value of the life estate is not received. See Matter

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<sup>1</sup> Petitioner applied for benefits around that time and was found otherwise eligible but subject to a transfer penalty from November 1, 2013 to January 21, 2015 due to the transfer of \$116,691. Petitioner claims in exceptions that Ocean County improperly raised this in their exceptions. While the introduction of documents that are not part of the record was improper, Petitioner disclosed the transfer penalty on his October 2015 application stating he had "penalty from 11/1/13 to 1/21/15." R-1. Moreover, Exhibit B in Petitioner's September 28, 2016 submission to the court sets forth the same dates and the amount of the transfer penalty. To that end, the evidence of the prior penalty was presented below. I also take judicial notice that Petitioner appealed and then withdrew a fair hearing on that penalty. See OAL Dkt. No. HMA 9652-2014,

of Giordano (Richard O.M.), 28 Misc. 3d 519, 2010 NY Slip Op 20190 (calculated the life estate value due a Medicaid recipient when the property is sold) and Matter of Peterson v Daines, 77 A.D.3d 1391 (N.Y. App. Div. 4th Dep't 2010) (Medicaid applicant's failure to receive life estate value when the property was sold by daughter/remainderman constitutes a transfer of assets for Medicaid purposes). As the Appellate Division of the Superior Court of New Jersey noted in E.S. v. DMAHS and Bergen County Board of Social Services, A-2290-14, decided October 26, 2016:

Like any other interest in real estate, a life estate is created by deed, N.J.S.A. 46:3-13; see also H.K., supra, 184 N.J. at 382-83, can be freely alienated, N.J.S.A. 46:3-5, is taxable, and has value. See In re Estate of Romnes, supra., 150 n.4 (1979) ("Life estates are taxable under N.J.S.A. 54:34-1 and the method of valuation is set forth in N.J.S.A. 54:36-2."). For that reason, the uncompensated transfer of a life estate warrants a transfer penalty under the law. See In re Peterson v. Daines, 77 A.D.3d 1391, 1392 (N.Y. App. Div. 4th Dep't 2010).

Like the applicant in that case, Petitioner, through his POA, voluntarily gave up his right to the life estate and the proceeds went to his sons.

Petitioner presented no proofs regarding his interest in the property absent the deeds filed. Those deeds show he held a life estate in the property. The Initial Decision's aside regarding the purchase being "years before the look-back period" has no bearing on this case. ID at 4. The creation of the 1995 deed and the funds used then and subsequently to pay for and maintain the property goes to Petitioner's contention that his life estate had no value. Neither the deeds themselves nor the seller's certification do this. ID at 4. The fact that Petitioner's son's claimed the sale price as a taxable consequence is a by-product of the value of the transferred asset. The recipient of transferred funds must determine whether or not to report it as a taxable event. It is the Medicaid applicant's actions that are at issue with regard to the

transfer's effect on Medicaid eligibility; not the effect of the transfer on federal and state tax law. As a finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. None was provided here.

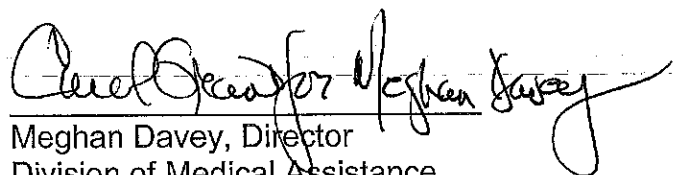
Petitioner's only proof regarding ownership is the testimony of his son, who claimed that he and his brother paid for the house and that they paid the carrying costs. Petitioner's son did not show the source of the funds used to purchase the house or any financial statement that he and his brother paid all fees associated with the house and that Petitioner paid no costs as was alleged.

Thus, I conclude that the law and the facts of this case do not support a finding that the transfer should be reversed. Petitioner's life estate had a value that was not compensated at the time of the sale of the property and Ocean County correctly imposed the penalty.

THEREFORE, it is on this <sup>17th</sup> day of FEBRUARY 2017,

ORDERED:

That the Initial Decision is hereby REVERSED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services