

The matter arises regarding the imposition of a transfer penalty. Camden County had set a penalty of 355-days beginning on July 1, 2106 for transfers totaling \$118,048. Petitioner appealed that action.

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. Petitioner claims that the some of the transfers to her daughters were to reimburse them for expenses they paid on her behalf.

The Initial Decision determined that three of the checks to Petitioner’s daughters were to reimburse for prior expenses. In April 2013 Petitioner withdrew \$4,500 to reimburse her daughter for \$4,200 hearing aids. After her home in Florida sold in May 2014, she paid two of her daughters for funds they expended on her nursing home care. These expenses total \$52,415. However, the Initial Decision goes on to find that that since Petitioner did not receive all the transferred funds back, the penalty must remain intact.

I agree the Initial Decision’s conclusion would be correct if Petitioner had only received partial return of uncompensated transfers. Here the transfers are both compensated and uncompensated. The latter transfers cannot be modified unless and

until all of the uncompensated transfers are returned to Petitioner. Through exceptions, Petitioner has acknowledged that there was \$65,633 in uncompensated transfers to her daughters. However, \$52,415 was transferred to her daughters to reimburse for documented expenses paid on Petitioner's behalf to the nursing home or for medical services. Those are not uncompensated transfers as Petitioner has received fair market value for them. As such, the penalty should be reduced to \$65,633.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision with regard to the uncompensated transfers but MODIFY the penalty calculation to only reflect that amount. The transferred amount of \$65,633 results in a penalty 197 days. (65,633 / 332.50).

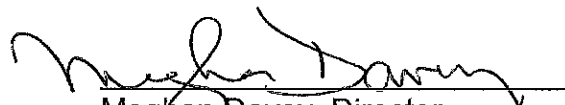
THEREFORE, it is on this ^{26th} day of JULY 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED in part with regard to the imposition of the penalty the transfer of \$65,633;

That the Initial Decision is REVERSED in part with regard to the inclusion of those transfers that were for fair market value; and

That Camden County shall impose a penalty of 197 days from July 1, 2016.



Meghan Davey, Director
Division of Medical Assistance
and Health Services