

The matter arises from the Essex County Board of Social Services' (ECBSS) January 1, 2020 notice of eligibility and penalty due to transfers in totaling \$298,950.15. That amount was later reduced to \$270,829.41 resulting in a twenty-five month and twenty-nine day penalty period beginning April 1, 2019 and ending May 29, 2021. A June 9, 2017 transfer of \$5,000 is the only transfer currently in dispute.

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). “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. 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).

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).

I agree with the ALJ that the Petitioner has failed to present any evidence to rebut the presumption that the transfer in question was made to qualify for Medicaid. Petitioner's son, and Power of Attorney, was unable to account for the \$5,000 cash withdrawal, other than to testify that he did not receive it, and none of the evidence established a paper trail of the whereabouts of the \$5,000.

Furthermore, I agree with the ALJ that just as Qualified Income Trusts (QIT) must be irrevocable and follow certain standards, including how the QITs are to be funded, so too must any account established under the trust. If the accounts are not irrevocable, they can be reached by the Trustee for non-trust purposes. Here, the parties stipulated that Petitioner's QIT was inaccurately funded and unqualified transfers of assets occurred after the creation of the QIT. While that matter is settled, I note that the facts of this case highlight the importance of correctly identifying both the QIT document and the accounts established thereunder.

Based on my review of the record and for the reasons set forth above, I hereby ADOPT the Initial Decision upholding the transfer penalty.

THEREFORE, it is on this ^{15th} day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services