



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

SHEILA Y. OLIVER  
Lt. Governor

SARAH ADELMAN  
Acting Commissioner

JENNIFER LANGER JACOBS  
Assistant Commissioner

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

E.M.

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 7882-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is May 20, 2021 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's

September 2019 application for Medicaid benefits. Petitioner was found eligible March 1, 2020 but subject to a transfer penalty of 711 days due to the transfer of \$250,323 to her son in 2017.

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. 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).

At the time of the transfer in 2017 Petitioner had suffered a stroke and her husband was residing in an assisted living facility. R-4. Some of funds that were transferred had been received by Petitioner's husband between 2016 and 2018 from a bequest from his late brother. R-4. In February 2017 Petitioner son diverted \$213,579 from his parents' joint account to an electronic brokerage account titled solely in his name.<sup>1</sup> R-4. According to Petitioner's affidavit, her husband had only received \$173,864 by that date so the balance was from other assets owned by the couple. R-4. Petitioner's son contends that he lost the transferred funds due to trading.

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<sup>1</sup> The Initial Decision set the transferred amount as \$217,539. The certification set the amount at \$213,579. It appears the decision transposed the 7 and the 3. The amount of \$213,579 is considered to be correct.

The Initial Decision found that Petitioner had not rebutted the presumption that the transfers were done so as to qualify for Medicaid. Petitioner and her husband had already suffered medical setbacks and her husband was residing in an assisted living facility when the funds were transferred. While Petitioner's son claimed the transferred funds were invested but lost through market volatility, no proof or accounting was presented. ID at 3. Once the funds were put in her son's account, Petitioner no longer had control of the funds and the funds became subject to the Medicaid transfer rules.

I agree with the Initial Decision's finding that the funds actually transferred equaled \$213,579. ID at 2. The inheritance referenced by Monmouth County had not fully paid out by the time of the transfer in 2017. The amount transferred was a combination of the inheritance and other assets. With the reduction in the transferred amount, Petitioner is subject to a penalty of 607 days. See Med. Comm. No. 19-07. Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision's finding that the transferred amount should be reduced and the new penalty upheld.

THEREFORE, it is on this <sup>19th</sup> day of MAY 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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