

This matter arises from Petitioner's July 18, 2019 application for Medicaid benefits. On November 21, 2019, the Ocean County Board of Social Services (OCBSS) found Petitioner eligible for benefits effective September 1, 2019, with one month retroactive eligibility beginning August 1, 2019. However, due to a transfer of assets for less than fair market value, OCBSS imposed a 304 day penalty from August 1, 2019 through May 30, 2020 due to the transfer of \$107,226.63.¹

The Petitioner asserts that the \$107,226.63 in withdrawals made from 2014 through 2019 were for his care. Petitioner's sister testified that five caregivers were hired over the course of the five years and that salaries were negotiated with each individual. There is no record of payment to the caretakers as all transactions were cash. Moreover, there is no agreement between Petitioner and his caretakers setting forth the agreed upon services or rate, method or time of payment. The only records produced by Petitioner consisted of three photo-copied pages of approximately 42 handwritten entries regarding Petitioner's care over the five years look-back period, not all of which referenced Petitioner's caregivers. Additionally, typed, notarized, yet undated, statements from three of Petitioner's caregivers only vaguely set forth some times and days when they worked from 2014 through 2019 and state only that they went to Petitioner's home "to ensure he was always safe and cared for," and "assist with daily household duties." These letters are not sufficient evidence of an employment contract, or that Petitioner received fair market value for caregiving services.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. During that time period, a resource cannot be transferred or disposed of for less than fair market value. 42 U.S.C.A. § 1396p(c)(1); see also N.J.A.C. 10:71-4.10(a). If such a transfer occurs, the applicant will be subject to a period of Medicaid ineligibility to be imposed once the person is otherwise eligible for Medicaid benefits. Ibid.; N.J.S.A. 30:4D-3(i)(15)(b). Petitioner bears the burden of proof

¹ On October 25, 2019, OCBSS issued its original determination of eligibility and transfer penalty which calculated a 307 day penalty for the transfer of \$108,236.63. Upon further review, the penalty was reduced to 304 days for the transfer of \$107,226.63.

to demonstrate that she received fair market value for the assets transferred or that the assets were transferred exclusively for a purpose other than to qualify for medical assistance. N.J.A.C.10:71-4.10(j). Here, Petitioner was unable to establish a pattern of payment to anyone for caregiving services, let alone rebut the presumption that the transfers for less than fair market value were made to establish Medicaid eligibility. N.J.A.C. 10:71-4.10. Accordingly, the OCBSS properly imposed the 304 day penalty for the transfer of \$107,226.63.

THEREFORE, it is on this 3rd day of FEBRUARY 2021,

ORDERED:

The Initial Decision is hereby ADOPTED.



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