State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Director

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

J.W.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
V.	:	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE	:	**OAL DKT. NO. HMA 4558-2014**
AND HEALTH SERVICES &	:	
HUNTERDON COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
RESPONDENTS.	:	

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 November 10, 2014, in accordance with an Order of Extension.

This matter concerns the imposition of a transfer penalty regarding monies paid to Petitioner's daughter under a caregiver agreement. In 2007 the family sought the services of an elder care attorney and entered into the agreement on February 21, 2007.[1] P-2. That agreement set forth monthly payments of $3,900 for room and board and $1,100 for reimbursement of expenses for a total of $4,800 [sic].[2] Prior to the agreement Petitioner had been paying $800 a month rent to her daughter. ID at 3.

I must note that any transfer for less than fair market value during the look-back period is presumed to have been made for the purpose of establishing Medicaid eligibility. E.S. v. Division of Medical Assistance & Health Services, 412 N.J. Super. 340, 353 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). It is the applicant's burden to rebut this presumption 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).

Here, Petitioner is seeking to show that she received fair market value for the transferred assets. However, the record contains no basis as to how the monthly rate of $4,800 was reached nor does the record contain competent evidence of exactly what was to be done and for what length of time to earn $4,800 a month. Her daughter, while caring for Petitioner, does not have any specialized training or skill that would potentially enabled her to have a professional level rate. There is no evidence that this amount is based on "the

[1] The agreement sought to authorize payment of $4,800 for January 2007 despite the prohibition in N.J.A.C. 10:71-4.10(b)6ii which states that transfers "for the alleged purpose of compensating for care or services provided free in the past shall be presumed to have been transferred for no compensation."

[2] The payments actually total $5,000 ($3,900 + $1,100) but it does not appear that Petitioner or the daughter ever caught the mathematical error. As the parties below used the $4,800, the FAD uses this figure as well.

prevailing rate of similar care and services in the community." N.J.A.C. 10:71-4.10(b)(6)(ii).

The contract also contains a termination clause wherein the agreement end at Petitioner death or at such time that Petitioner "is no longer able to care for her own personal needs such as bathing, toileting, dressing herself and/or eating without assistance." P-2 at 4. Needing assistance with these fundamental tasks is usually the purpose of entering a caregiver agreement. Yet, Petitioner agreed to terminate the agreement when she would need someone to assist her. To that end, it is implausible that the payment of $4,800 is fair market value for the minimal services contemplated by the written agreement.

As the ALJ noted, it is not to say that some services were not rendered by Petitioner's daughter but there is simply no evidence as to their value. As noted in the termination clause, Petitioner had not agreed to pay her daughter for once she needed assistance with her personal needs. As the Initial Decision did reduce the penalty for the $800 a month fair market rental value, $4,000 was left to pay for monthly "companionship, shopping services and transportation services" and meals. ID at 4. To that end, I disagree with Hunterdon County's exceptions that they were not able to verify the rent. The caregiver agreement provided for compensation for rent, which was established at $800 a month based on average rental costs for the county as well as the rate Petitioner had previously paid to her daughter. Thus, I FIND that amount can be considered to be for fair market value and was properly used to reduce the penalty.

In exceptions, Petitioner's daughter argued that she was entitled to an additional offset of the transferred funds based on the fees associated with the Power of Attorney (POA). First of all, this is new information not presented at the

hearing below and is prohibited from being raised. N.J.A.C. 1:1-18.4(c) states "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referenced within exceptions." By Petitioner's own admission, her daughter failed to raise the POA fees at any time prior to the filing of exceptions. Second, even assuming the fees were properly raised and that transfers, originally argued to be pursuant to the caregiver agreement, could be recast as POA fees, there is no indication that Petitioner's daughter was acting under the POA agreement continuously from 2005 through 2013. The Initial Decision states that she continued to "write her own checks for about five years after the execution of the Power of Attorney" which would be in 2010. ID at 3. The record appears to show that Petitioner was signing her own checks until 2013. P-4. The argument that the transfers now should be considered POA fees is improper under the rules and, even if the argument was raised below, it is not supported by the record.

Thus, I hereby ADOPT the Initial Decision and set Petitioner's penalty at $44,120.07.

THEREFORE, it is on this 10th day of NOVEMBER 2014

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED.

Valerie Harr, Director
Division of Medical Assistance
and Health Services