



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

PHILIP D. MURPHY
Governor

CAROLE JOHNSON
Commissioner

SHEILA Y. OLIVER
Lt. Governor

JENNIFER LANGER JACOBS
Assistant Commissioner

July 30, 2020

Linda Ershow-Levenberg, Esq.
Fink Rosner Ershow-Levenberg
60 Walnut Avenue, Suite 202
Clark, NJ 07066

Re: FINAL AGENCY DECISION

Ann Henckel

OAL Dkt No. HMA 14916-2019

Dear Sir or Madam

Enclosed is the Final Agency Decision rendered in the above captioned matter.

If you are dissatisfied with the decision, you have the right to seek judicial review by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, P.O. Box 006, Trenton, New Jersey 08625. A request for judicial review must be initiated within 45 days from the date of receipt of the decision. If you have any questions concerning an appeal to the Appellate Division, you should call (609) 815-2950.

Very truly yours,

Lisa N. Lackay, Esq.

Office of Legal & Regulatory Liason
DMAHS

MVP:GO
Enclosure

C: County-Bergen - Gina Kennedy

Board of Social Services (BCBSS) determined that Petitioner was eligible as of May 1, 2019 but had transferred \$392,000 resulting in a thirty-seven month, four day penalty. As a result, Petitioner's eligibility would not become effective until June 4, 2022. BCBSS denied Petitioner's request for a caregiver exemption.

A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "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.


Limited exemptions to the transfer penalty rules exist. The New Jersey regulations regarding the caregiver exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. The exemption permits the transfer without penalty of the applicant's home when an applicant needed institutional level care during the two years prior to the transfer and that the care rendered by a child was to such an extent that it permitted the applicant to avoid institutionalization. N.J.A.C. 10:71-4.10(d)4. The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." Id. It is Petitioner's burden to prove that she is entitled to the exemption.

The Initial Decision found that J.H. was Petitioner's primary caretaker, without remuneration, and that J.H.'s siblings assisted with Petitioner's care, without remuneration, when J.H. was unavailable. (ID at 24). The Initial Decision also found that J.H. performed numerous tasks, both ADLs and Instrumental Activities of Daily Living (IADLs), during the two years prior to institutionalization. The IADLs performed by J.H., such as housekeeping, grocery shopping, meal preparation and laundry, are routine tasks that, alone, do not exceed normal personal support activities as required by N.J.A.C. 10:71-4.10(d)4. However, J.H. assisted Petitioner with her ADLs, specifically, bathing, dressing, personal hygiene and toileting. N.J.A.C. 10:60-3.1(c)1; N.J.A.C. 10:71-4.10(d)(4)(i). There is no specific requirement that an individual be bedridden, reliant on a wheelchair, or require medical equipment such as an IV drip, ventilator or Oxygen tank in order to meet the eligibility standards for nursing home level of care. The record shows that Petitioner needed hands on assistance with at least three ADLs, which would have qualified her for comprehensive services designed to keep her out of the Facility pursuant to the MLTSS program requirements. Therefore, I FIND that the record supports Petitioner's application for a caregiver exemption, J.H. provided care consistent with 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d).

THEREFORE, it is on this ^{20th} day of JUNE 2020,

ORDERED:

That the Initial Decision is hereby REVERSED and Petitioner's application for a caregiver exemption from the assessed transfer penalty is GRANTED.


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