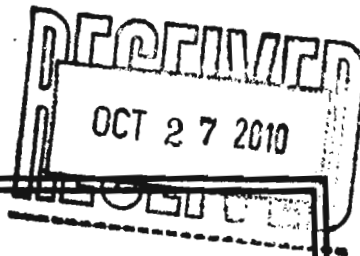


COPY



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on OCT 25 2010**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 08047-10

AGENCY DKT. NO. 0910066347

R.C.,

Petitioner,

v.

DIVISION OF MEDICAL ASSISTANCE AND

HEALTH SERVICES & HUDSON COUNTY

BOARD OF SOCIAL SERVICES,

Respondents.

Shelby Neiss, Esq., for Petitioner

(Law Office of Donald Vanarelli, attorneys)

Mateo Perez, Esq., Assistant County Counsel appearing for respondent Hudson
County Board of Social Services

Division of Medical Assistance and Health Services, respondent, appearing
pursuant to N.J.A.C. 1:1-5.6(a)

Record Closed: October 5, 2010

Decided: October 22, 2010

BEFORE **LELAND S. MCGEE, ALJ:**

STATEMENT OF THE CASE

Petitioner became hospitalized in March 2010 and applied for Medicaid benefits on June 30, 2010. The Division of Medical Assistance and Health Services (DMAHS) and the Union County Board of Social Services (Board) denied Petitioner's application for Medicaid benefits on the date of application, because Petitioner and his spouse transferred one hundred thousand (\$100,000) dollars to their daughter in August 2008 allegedly in violation of N.J.A.C. 10:71-4.7. Petitioner contends that the transfer was for a purpose other than to qualify for Medicaid, and is therefore excludable pursuant to N.J.A.C. 10:71-4.7(j)(2).

PROCEDURAL HISTORY

Respondent transmitted this contested case to the Office of Administrative Law (OAL), where it was filed on July 27, 2010, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing was scheduled for August 31, 2010, but was adjourned at the request of Petitioner's counsel due to a scheduling conflict. The hearing was held on October 5, 2010, at which time the record closed.

FACTUAL DISCUSSION & FINDINGS

The following facts are undisputed, and therefore I **FIND** them to be **FACTS** of this case:

Petitioner and his spouse have a daughter, A.H., who is married to J.H., and they are living in Georgia. In August 2008, Petitioner and his spouse refinanced their marital home located in Kearny, New Jersey where they have lived since November 1996. They took out one hundred ninety thousand (\$190,000) dollars from the refinancing, and gave one hundred thousand (\$100,000) to their daughter and son-in-law. The balance was used to pay off the old mortgage on the marital home.

On March 30, 2010, Petitioner became ill and was hospitalized. He was transferred from the hospital on March 31, 2010, to a long-term care facility. Petitioner applied for Medicaid benefits and was denied on the day of the application.

Testimony

Petitioner's spouse ("Spouse") testified on behalf of Petitioner. She stated that Mr. & Mrs. H. had a restaurant in Georgia which suffered financially and ultimately closed down. Her stepdaughter informed Petitioner and her that the H's had financial problems. Arrangements were then made to take out a loan against the marital home, in order to assist them. At the time that they provided funds to Mr. & Mrs. H., Petitioner was living at home, was well, and was employed. It was not until November 2009, that Petitioner had a stroke and later retired. His health declined in February 2010 and nobody anticipated that he would contract pneumonia in March 2010, be hospitalized and that March 30, 2010, would be the last time that Petitioner would be home.

The Spouse stated that Petitioner was diagnosed with Alzheimer's disease, and that he cannot go to the bathroom by himself or otherwise care for himself. She kept him at home and cared for him as long as she could. Her last payment to the facility for his care was by credit card. Although Mr. and Mrs. H. are now working, they are not in a position to repay the money that was given to them. Neither Petitioner nor the Spouse has funds to pay for Petitioner's care.

Respondent offered evidence that, as of June 30, 2010, the combined total resources for Petitioner and his spouse were below the Community Spouse Resource Allowance. (Exhibit R-1). Petitioner asserts that, if he and his spouse had not taken the loan against the house, this asset would still be below the resource limit, and would have been so for each of the preceding thirty months. No evidence was produced to refute this assertion.

Factual Discussion

A credibility determination requires an overall evaluation of the testimony in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). For testimony to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 555 (1954). It must be such as the common experience and observation can approve as probable under the circumstances. Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961). The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952)(citation omitted), certif. denied, 10 N.J. 316 (1952).

The testimony of Petitioner's spouse was credible. Respondent did not offer any testimony or evidence which was otherwise persuasive. In addition, there is no evidence of a connection between the transfer of the funds to Mr. and Mrs. H., and the illness sustained by Petitioner or his need for Medicaid benefits. Based on the stipulated facts, the testimonial and documentary evidence presented, and having had the opportunity to observe the demeanor of the witness, and to assess credibility, I **FIND**, from the spouse's credible testimony the following critical **FACTS**:

Petitioner was in good health and employed when he transferred \$100,000 to Mr. and Mrs. H. He suffered a disabling stroke after the transfer. The transfer was to help a financially distressed child and not to establish eligibility for Medicaid benefits.

ANALYSIS AND CONCLUSIONS

Title XIX of the Social Security Act established the Medicaid program under which participating states may provide federally funded medical assistance to certain eligible needy persons. Dougherty v. Department of Human Services, Div. of Medical Assistance & Health Services, 91 N.J. 1, 4 (1982); See also 42 U.S.C. §1396. By enacting the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.1, New Jersey has elected to participate in the Medicaid program. L.M. v. Div. of

Medical Assistance & Health Servs., 140 N.J. 480, 485 (1995). The New Jersey Act established the Division of Medical and Health Services (DMAHS), within the Department of Human Services as the State agency obligated to perform the administrative functions required for participation in the Medicaid program through the promulgation of rules and regulations. Bergen Pines County Hospital v. New Jersey Dep't of Human Services, 96 N.J. 456, 465 (1984). See also N.J.S.A. 30:4D-4, -5.

The regulations also permit an applicant or beneficiary to rebut the presumption that the asset or resource was transferred to establish Medicaid eligibility. N.J.A.C. 10:71-4.7(i); N.J.A.C. 10:71-4.10(j). If the individual wishes to rebut such presumption, the burden of proof rests with the individual to present convincing evidence to establish that the assets or resources were transferred exclusively (that is, solely) for some purpose other than establishing Medicaid eligibility. N.J.A.C. 10:71-4.7(i); N.J.A.C. 10:71-4.10(j).

Thus, it is Petitioner's burden to establish by "convincing evidence" that the transfer was made solely for a purpose other than to establish financial eligibility for Medicaid. I **CONCLUDE** that Petitioner has met his burden of demonstrating that, the transfer was solely and exclusively for some purpose other than establishing Medicaid eligibility. Petitioner meets this burden by showing that he was employed and in good health when the transfer occurred. The disabling stroke was a sudden event unanticipated at the time of the transfer.

Petitioner relies upon N.J.A.C. 10:71-4.7(j)(2) which provides that one factor which indicates that the transfer was made for some other purpose is that the resources would have been below the resource limit during each of the preceding 30 months if the transferred resource had been retained. I **CONCLUDE** that Petitioner has met his burden of demonstrating that the transfer of the money to his daughter satisfies the criteria set forth in N.J.A.C. 10:71-4.7(j)(2).

The regulations provide that a resource classified as excludable shall not be considered either in the deeming of resources or in the determination of eligibility for

participation in the Medicaid Only Program. N.J.A.C. 10:71-4.4(a). Excludable resources include a house occupied by the individual as his/her place of residence. N.J.A.C. 10:71-4.4(b)(1). At the time of the transfer of the funds, Petitioner resided in the mortgaged home as his principal residence. I **CONCLUDE** that the marital home was an excludable resource at the time that the loan was taken out and the transfer of a portion of the proceeds of the loan should not be considered in the determination of eligibility for Medicaid benefits.

ORDER

It is **ORDERED** that Respondent's denial of Petitioner's application for Medicaid benefits be **REVERSED** and that Petitioner be determined eligible for benefits effective June 30, 2010.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within seven (7) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, P.O. Box #3 PO Box 712, Trenton, New Jersey 08625-07**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 22, 2010

DATE


LELAND S. MCGEE, ALJ

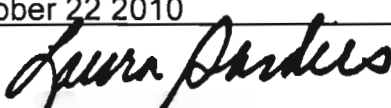
Date Received at Agency:

October 22 2010

Date Mailed to Parties:

OCT 25 2010

lr


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

LIST OF WITNESSES

For Petitioner:

Pilar Ceruto

For Respondent:

None

EXHIBITS IN EVIDENCE

For Petitioner:

- P-1 Mortgage dated August 6, 2008
- P-2 Copy of check dated August 6, 2008
- P-3 Copy of bank deposit

For Respondent:

- R-1 Copy of letter from Attorney for Petitioner to Respondent dated June 30, 2010