NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2329-09T3

J.M.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES and CAPE MAY
COUNTY BOARD OF SOCIAL SERVICES,

Respondents-Respondents.

Submitted January 4, 2011 - Decided August 30, 2011

Before Judges Carchman and Graves.

On appeal from the Division of Medical Assistance and Health Services.

Monzo Catanese, P.C., attorneys for appellant (Joseph F. Pelusi, on the brief).

Paula T. Dow, Attorney General, attorney for respondent Division of Medical Assistance and Health Services (Melissa H. Raksa, Assistant Attorney General, of counsel; Julie Hubbs, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner J.M. appeals from a November 30, 2009 final decision of the Division of Medical Assistance and Health

Services (the Division) denying her application for Medicaid benefits. For the reasons that follow, we affirm.

We begin with a brief background of Medicaid's statutory framework. Medicaid is a federal-state program that extends medical benefits to those "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C.A. § 1396-1. Although participating states must have their plans approved by the U.S. Secretary of Health and Human Services in order to receive federal funding, ibid., they are granted discretion to develop "reasonable standards" that are "consistent with the objectives of" the program. 42 U.S.C.A. § 1396a(a)(17)(A); see also Mistrick v. Div. of Med. Assistance & Health Servs., 154 N.J. 158, 166 (1998). In New Jersey, the Legislature has empowered the Commissioner of Human Services to promulgate "all necessary rules and regulations" to ensure federal approval, N.J.S.A. 30:4D-7, and the Division is responsible for the program's day-to-day administration. N.J.S.A. 30:4D-5; N.J.A.C. 10:71-2.2(a).

Our Legislature has expressly stated its intent "to provide medical assistance, insofar as practicable, on behalf of persons whose resources are determined to be inadequate to enable them to secure quality medical care at their own expense." N.J.S.A.

30:4D-2. According to the Legislature, such assistance "shall be the last resource benefit[]" to those in need. Ibid.

With these goals in mind, the Commissioner has limited Medicaid eligibility to individuals with resources valued at $2000 or less. N.J.A.C. 10:71-4.5(c). The term "resources" includes any real or personal property, liquid or nonliquid, "which is owned by the applicant (or by those persons whose resources are deemed available to him/her, as described in N.J.A.C. 10:71-4.6) and which could be converted to cash to be used for his/her support and maintenance." N.J.A.C. 10:71-4.1(b). Additionally, the disposal of assets for less than fair market value may preclude benefit eligibility. N.J.A.C. 10:71-4.10(a). To obtain Medicaid benefits, an individual must submit an application to his or her local county board of social services. N.J.A.C. 10:71-2.2(c), (d). The appeal in this case stems from the denial of J.M.'s application.

J.M., who is now seventy-nine years old, resided in Rosemont, Pennsylvania, with her husband from 1963 to 2008. The couple separated in February 2008,[1] and J.M. moved in with her daughter, M.R., who lived in a two-story, two-bedroom rental house in Cape May, New Jersey, with her husband, G.R., and a

[1] Their divorce became effective in July 2008.

son.[2] J.M.'s marital home was sold on February 28, 2008, and she and her husband equally shared the net proceeds, which amounted to $305,717.90.

On March 10, 2008, J.M. wrote a check to M.R. and G.R. in the amount of $150,000, a sum roughly equal to her share of the real estate settlement. In the memo line of the check, J.M. wrote "Gift." One month later, on April 10, 2008, M.R. and G.R. purchased a three-bedroom, ranch-style house (the Property) in North Cape May, New Jersey, for $407,500. They used the money provided by J.M. as a down payment and obtained a mortgage loan for the remainder of the cost.

In early May 2008, J.M. collapsed at home. M.R.'s son discovered J.M. on the floor, "drenched in sweat," and saying "she couldn't see and couldn't get herself up." Paramedics transported J.M. to the emergency room at Cape Regional Medical Center, where she was diagnosed with a severe bacterial infection. J.M. stayed at Cape Regional for approximately one week until she was approved for short-term nursing facility placement by the Department of Health and Senior Services (DHSS). J.M. was then moved to North Cape Center, where she remained until November 20, 2008.

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[2] The record indicates that M.R. and G.R. initially rented an apartment for J.M., but J.M. stayed in the apartment for less than a week because "she didn't want to live alone."

On July 17, 2008, M.R. and G.R. signed a document granting J.M. a life estate in the Property "[i]n consideration for the receipt of the sum of One Hundred Fifty Thousand Dollars." The grant was witnessed by an attorney, and M.R. and G.R. attempted to record it. However, an October 8, 2008 letter from the office of the Cape May County Clerk indicated that the document could not be recorded under N.J.S.A. 46:16-1. The letter suggested that "a deed for nominal consideration be drawn from [M.R. and G.R.] to themselves with a paragraph describing the life estate granted to [J.M.]." That same day, J.M. withdrew her application for Medicaid benefits, which had been filed on September 4, 2008.

M.R. and G.R. executed a deed on November 7, 2008, that transferred a life estate in the Property to J.M.[3] The deed recited that the life estate was granted "for the sum of ONE HUNDRED FIFTY THOUSAND ($150,000.00) DOLLARS plus other good and valuable consideration." It was recorded on December 5, 2008.

J.M. was released from North Cape Center on November 20, 2008. Her condition worsened over the next few months, however, and a March 6, 2009 letter from DHSS indicated that she was eligible for long-term nursing facility placement. On March 14,

[3] Despite being signed in November 2008, the deed stated that it was "made on April 10, 2008."

2009, J.M. was admitted to Crest Haven Nursing and Rehabilitation Center.

On April 22, 2009, M.R. applied for Medicaid benefits on J.M.'s behalf. The application disclosed bank accounts with assets totaling $732.02 and a monthly income of $491 comprised entirely of Social Security payments. Nevertheless, the application was denied by the Cape May County Board of Social Services (the County Board) on June 19, 2009. The only stated reason for the denial was: "You gifted $150,000.00." J.M.'s attorney requested a fair hearing on July 8, 2009.

J.M.'s hearing took place at the Office of Administrative Law (OAL) on August 19, 2009. The administrative law judge (ALJ) heard testimony from Diane Herman, a representative of the County Board; M.R.; and Denise Uhlman, a licensed real estate agent. M.R. testified that the Property had been purchased at J.M.'s urging and that they were "all in agreement" that "it would be all of our house." Therefore, although M.R. and G.R. purchased and financed the house themselves, they did so with the understanding that J.M. would ultimately receive an interest in the Property:

> Q. Do you have any idea why the word, "Gift," was written in that section of the check, the memo section?
>
> A. No, I don't. It was not a gift, it was to be part of her house also.

> Q. But, you accepted this as an unconditional transfer of funds with that type of arrangement that she have some interest in the home.
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> A. This was completely conditional. She was going to have her life estate with us in the house, she would not be paying any bills, and she would have a place to live for the rest of her life.

Additionally, M.R. stated that the deed was executed to allay her and G.R.'s "concerns" about the arrangement:

> Q. After you purchased the property and the three of you moved in . . . what did you do at that point to try to confirm or document your mother's interest in the property?
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> A. We contacted [an attorney] because we didn't feel right just leaving things kind of up in the air and very vague about mom's interest in the property.
>
> . . . .
>
> Q. And did you have any concerns about having it as a recorded document as part of the acquisition?
>
> A. Yes, I did, I had a lot of concerns.
>
> Q. And what were those concerns? Was it because of the financing arrangements?
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> A. The financing arrangements. And also because I wanted my sisters to realize that my husband and I were going to be responsible for my mother and take care of her. And [in order] to settle any issues in the future, we wanted something documented.

Uhlman testified as an expert in "real estate and evaluation of properties for rental purposes." Based on comparable homes in the area, Uhlman testified that the Property's net rental value was approximately $1500 per month. Therefore, in light of J.M.'s age and life expectancy, her rental interest in the Property was "slightly more than $750 per month," and the total value of her life estate was $212,246.43.

The ALJ rendered an initial decision on October 8, 2009. Based on the evidence presented, particularly M.R.'s "uncontroverted testimony that the [$150,000 check] was paid in return for the right to reside in the [Property] for the term of petitioner's life," the ALJ determined that the money was consideration rather than a gift:

> Nothing else explains petitioner's action. Petitioner has three daughters. By conveying the $150,000 to [M.R. and G.R.], petitioner effectively disinherited her other two children. The agency has offered no reason why petitioner would have taken such a precipitous action.
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> Further, the check . . . is payable not just to petitioner's daughter, M.R., but to [M.R. and G.R.]. The inclusion of the non-blood relative [G.R.] on the check can only be explained by the fact that both [M.R. and G.R.] took title to the [Property].
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> Based upon these facts, I am satisfied that the $150,000 was not a gift, but was intended to insure petitioner residence with [M.R. and G.R.] for the term of her natural life. Petitioner likely was unfamiliar with

> the legal term "life estate," but her intent to create one is clear. Accordingly, I FIND that the $150,000 payment was not a gift, but was paid for value. The value was the life estate.

Nevertheless, the ALJ affirmed the County Board's benefit denial. Citing the federal Deficit Reduction Act of 2005, 42 U.S.C.A. 1396p(c)(1)(J), the judge noted that a life estate was only exempt as an asset where "the purchaser resides in the home for a period of at least 1 year after the date of the purchase." Because J.M. "did not reside at [the Property] for the required one year," the ALJ determined that she was ineligible for benefits.

J.M. filed a list of exceptions, and the Director of the Division rendered a final administrative decision on November 30, 2009. Although the Director adopted the portion of the initial decision concerning J.M.'s residency under the Deficit Reduction Act, he also found that J.M. "did not receive fair market value for the $150,000." More specifically, the Director stated:

> I FIND that the documents presented at the hearing demonstrate no basis for the conclusion that the life estate was created at the time the daughter and son-in-law took possession in April 2008. There is no document contemporaneous to the closing date for the new property that gives Petitioner a life estate interest. The check written in March 2008 was a gift as indicated on the check itself. It is only after Petitioner

> collapses and is hospitalized in May 2008, that documents appear purporting to create a life estate from that $150,000 check. The first of these documents is not signed until July 17, 2008 wherein the daughter and son-in-law attempt to give Petitioner a life estate in the [Property] "effective as of the 10th day of March 2008." . . . However, on March 10, 2008, they had no legal interest in the [Property] that they could convey to Petitioner. The daughter and son-in-law did not close on the property until April 10, 2008 a month later. That July 2008 document was also rejected [on] October 4, 2008 by the Cape May County clerk's office as insufficient to file. This is the same date Petitioner withdrew her first application for Medicaid benefits. . . .
>
> A month later on November 7, 2008, Petitioner's daughter and son-in-law executed a deed that stated "this Deed is made on April 10, 2008." No cogent explanation is given why a deed purportedly made on April 10, 2008 is not executed until November 7, 2008 and why another document . . . was prepared in July 2008 attempting to make the same transfer. Even using the earliest attempt in July 2008 to document in writing and transfer a life estate to Petitioner, . . . Petitioner did not reside in the home for a year.

J.M. filed a notice of appeal on January 20, 2010, and now presents the following arguments for our consideration:

> POINT I
>
> THE AGENCY HEAD ERRED BY REJECTING THE ALJ'S FINDINGS OF FACT AS TO THE CREDIBILITY OF LAY WITNESSES WITHOUT DETERMINING THAT THOSE FINDINGS WERE ARBITRARY, CAPRICIOUS OR UNREASONABLE OR NOT SUPPORTED BY SUFFICIENT, COMPETENT AND CREDIBLE EVIDENCE IN THE RECORD.

POINT II

THE AGENCY HEAD AND THE ALJ ERRED BY INTERPRETING 42 U.S.C. 1396p(c)(1) AS REQUIRING THAT APPELLANT "ACTUALLY LIVE" IN THE HOME IN WHICH THE LIFE ESTATE WAS PURCHASED FOR ONE FULL YEAR IN ORDER TO QUALIFY FOR MEDICAID ASSISTANCE.

A. APPELLANT'S LIFE ESTATE IS AN EXEMPT ASSET, AS DEFINED BY 43 U.S.C. 1396p(c)(1)(J), FOR PURPOSES OF MEDICAID ELIGIBILITY BECAUSE APPELLANT RESIDED IN THE HOME OF OTHER INDIVIDUALS, IN WHICH SHE HAD PURCHASED A LIFE ESTATE, FOR AT LEAST ONE YEAR.

B. EVEN IF APPELLANT DID NOT RESIDE IN THE HOME FOR ONE YEAR, SHE IS STILL ELIGIBLE FOR MEDICAID BENEFITS BECAUSE NEITHER SOCIAL SERVICES NOR THE ALJ RAISED THE ONE YEAR ISSUE AT ANY TIME BEFORE THE ALJ ISSUED HIS DECISION, THUS PRECLUDING APPELLANT FROM PRESENTING EVIDENCE ON THE ISSUE.

"Appellate review of an agency's determination is limited in scope." Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). "Without a 'clear showing' that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record, an administrative agency's final quasi-judicial decision should be sustained, regardless of whether a reviewing court would have reached a different conclusion in the first instance." Ibid.; see also Messick v. Bd. of Review, 420 N.J. Super. 321, 325 (App. Div. 2011) (stating that appellate

courts "are required to defer to an agency's technical expertise, its superior knowledge of its subject matter area, and its fact-finding role"). We accord particular deference to agencies that are "authorized to interpret and apply a statute." McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 612 (App. Div. 2010). Therefore, our review is confined to the following inquiries:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [Circus Liquors, supra, 199 N.J. at 10 (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).]

Having reviewed the record and applicable law, we discern no error in the Director's decision. As the agency noted, the word "Gift" on the $150,000 check strongly indicates that it was not intended as consideration. In addition, the four-month gap between that transfer and the grant of a life estate undermined J.M.'s claim that they were interrelated parts of a single agreement. Therefore, the Director's rejection of M.R.'s testimony was supported by sufficient credible evidence and was

not arbitrary, capricious, or unreasonable. See N.J.S.A. 52:14B-10(c) (permitting an agency to reject lay witness testimony where it is "not supported by sufficient, competent, and credible evidence in the record"). As a gift, the check constituted a transfer of assets for less than fair market value. See N.J.A.C. 10:71-4.10(a)(3) (defining assets to "include all income and resources" of the applicant). Moreover, because the transfer occurred within thirty-six months of J.M.'s April 22, 2009 Medicaid application, that application was properly denied. N.J.A.C. 10:71-4.10(a).

We also reject J.M.'s contention that her life estate does not qualify as an asset under 42 U.S.C.A. § 1396p(c)(1)(J). That provision states: "For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase." Ibid. As J.M. acknowledges in her brief, the paragraph referenced by the provision, 42 U.S.C.A. § 1396p(c)(1), relates to the improper disposal of assets for less than fair market value. Within that scope, subparagraph (J) refers only to transfers in which an individual sells property but retains a life estate. That is not the case here.

Moreover, even if subparagraph (J) did apply to this case, the record establishes that J.M. failed to reside at the Property for one year after receiving the life estate. We reject her assertion that the statute does not require actual residence. The Center for Medicaid and Medicare Services (CMS), an organization charged by Congress with defining Medicaid eligibility requirements, see A.B. v. Div. of Med. Assistance & Health Servs., 374 N.J. Super. 460, 465 (App. Div.), certif. denied, 185 N.J. 38 (2005), has stated that an applicant who retains a life estate must "actually live[] in the home for at least one year after the date of purchase,"[4] and we defer to its expertise. See N.M. v. Div. of Med. Assistance & Health Servs., 405 N.J. Super. 353, 364 (App. Div.) (noting that "CMS's interpretation of the federal statutes governing the Medicaid program is 'entitled to respectful consideration and deference'") (quoting Estate of F.K. v. Div. of Med. Assistance & Health Servs., 374 N.J. Super. 126, 142 (App. Div.), certif. denied, 184 N.J. 209 (2005)), certif. denied, 199 N.J. 517 (2009).

In view of the foregoing, J.M. has failed to establish that the Director's decision was contrary to the law; arbitrary,

[4] Important Facts for State Policymakers, Centers for Medicaid and Medicare Services, http://www.cms.gov/DeficitReductionAct/downloads/TOAbackgrounder.pdf (Jan. 8, 2008).

capricious, or unreasonable; or not supported by substantial evidence. Accordingly, the final administrative determination is affirmed.