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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4756-11T3

P.W., EXECUTRIX OF THE ESTATE
OF M.Y.,

Petitioner-Appellant,

v.

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

Respondents-Respondents.

Submitted February 24, 2014 - Decided April 29, 2014

Before Judges Kennedy and Guadagno.

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

Hartman & Winnicki, P.C., attorneys for appellant (Warren S. Robins, on the brief).

John J. Hoffman, Acting Attorney General, attorney for respondent Division of Medical Assistance and Health Services (Melissa H. Raksa, Assistant Attorney General, of counsel; Jennifer L. Finkel, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner M.Y. (Mary),[1] appeals from the final agency decision of the Director of the Division of Medical Assistance and Health Services (Division), rejecting the initial decision of an Administrative Law Judge (ALJ), and upholding the decision of respondent Bergen County Board of Social Services (BCBSS). The BCBSS imposed a transfer penalty on Mary's application for Medicaid benefits based on a determination that Mary had transferred funds to her two adult daughters, P.Y.W. (Paula) and G.Y. (Gina), and her granddaughter R.W. (Reba) for less than fair market value within thirty-six months of the date of her application (the "look-back" period).

On appeal, Mary argues that the Division's ruling was not supported by the record below and was contrary to the finding of the ALJ. She also claims that a caregiver agreement rebutted the presumption that the transfer of funds was made for purposes of establishing eligibility and that she produced sufficient evidence to prove the transfers were made pursuant to the agreement. For the reasons that follow, we reject these arguments and affirm.

[1] We employ fictitious names for ease of reference.

I.

On November 15, 2005, Mary signed a "Care Agreement" with Paula under which Paula would provide room and board for her mother in return for payment by Mary of $2,000 per month, consisting of $800 in rent and $1,200 in services. Some of the services identified in the contract included preparation of three meals per day; weekly cleaning and laundry; assistance with bathing, dressing, hair care, and shopping; and assistance in financial management.

Mary resided with Paula from November 2005 to November 2007. During this period, Mary paid Paula $2,000 per month for four months, between March 2006 and June 2006 and for seven months between January 2007 and July 2007. During this period, Mary also transferred $16,000 to her granddaughter, Reba.

Mary moved into an assisted living facility in December 2007 and remained there until April 2008. Mary then moved in with her other daughter, Gina in May 2008 and remained there until April 2010. No caregiver agreement was executed between Mary and Gina, but during the time Mary resided with her, Mary transferred $46,595 to Gina. In the spring of 2010, Gina and Paula placed Mary in a nursing home.

On December 20, 2010, Gina applied to the Division through the BCBSS for Medicaid benefits for her mother. BCBSS reviewed

Mary's finances and disallowed the $1,200 monthly payments for services as transfers for less than fair market value within the look-back period. Initially, a nine-month, three-day transfer penalty[2] was imposed running from December 1, 2011, the date Mary would have been eligible, to September 4, 2012, based on disallowed payments of $65,592.06.

Mary appealed and the matter was transferred to the Office of Administrative Law. After a hearing, the ALJ issued her initial decision, ordering that the $1,200 monthly payments for services be excluded from the penalty period.

On April 18, 2012, the Division rejected the decision of the ALJ and adopted the amended penalty period imposed by BCBSS based on $71,611.84 in transfers for less than fair market value. The Director found that the Care Agreement was a "mechanism for transferring resources" to Paula, and Mary had not received fair market value for the $1,200 in monthly services as set forth in the agreement.

II.

Our role in reviewing the decision of an administrative agency is limited. In re Stallworth, 208 N.J. 182, 194 (2011).

[2] 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. See H.K. v. State, 184 N.J. 367, 380 (2005).

In order to reverse an agency's judgment, we must find the agency's decision to be "arbitrary, capricious, or unreasonable, or [ ] not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

In determining whether agency action is arbitrary, capricious, or unreasonable, we must examine:

> (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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> [In re Carter, 191 N.J. 474, 482-83 (2007) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).]

We will affirm an agency decision so long as it is supported by the evidence, even if we may question the wisdom of the decision or would have reached a different result. Id. at 483; see also In re Herrmann, 192 N.J. 19, 28 (2007); In re Polk, 90 N.J. 550, 578 (1982) (a reviewing court "has no power to act independently as an administrative tribunal or to substitute its judgment for that of the agency"). This is particularly true when the issue under review is directed to the

agency's special "expertise and superior knowledge of a particular field." Herrmann, supra, 192 N.J. at 28.

To be eligible for Medicaid, all includable income and resources must fall below certain limits in order for an applicant to be deemed eligible for Medicaid benefits. See 42 U.S.C.A. § 1396; 42 U.S.C.A. § 1396a(a)(10)(A). See also N.M. v. Div. of Med. Assistance & Health Servs., 405 N.J. Super. 353, 359 (App. Div. 2008). To discourage applicants from disposing of assets for the sole purpose of becoming eligible for Medicaid, all property transfers for less than fair market value and made within thirty-six months before the application are scrutinized. 42 U.S.C.A. § 1396p(c)(1)(B)(i); N.J.A.C. 10:71-4.10(a). A transfer of resources for less than fair market value creates a presumption that the assets were transferred to establish Medicaid eligibility. N.J.A.C. 10:71-4.10(i)1. To rebut that presumption, the applicant must present "convincing evidence that the assets were transferred exclusively for some other purpose." N.J.A.C. 10:71-4.10(j). If the presumption is not rebutted, the person will be ineligible for Medicaid for up to thirty months. N.J.A.C. 10:71-4.7(b)(4).

In reinstating the penalty as calculated by BCBSS, the Director found that Mary had failed to demonstrate that she received fair market value for the assets she transferred. In

support of this conclusion, the Director noted that from March 2006 through June 2006 Mary paid $2,000 per month to Paula. From June through December 2006, and for August and September 2007, the monthly payments were made to Paula's thirteen-year-old daughter, Reba. Five of the months Reba received payments were during the school year when she was presumably attending school.[3] The record is devoid of any explanation as to why Reba would receive these payments.

The Director also noted that, after leaving Paula's house, Mary spent five months in a nursing home before moving into Gina's house in May 2008. There was no caregiver agreement between Mary and Gina and the payments were sporadic and irregular: Gina received a $5,000 payment in July 2008 and a $20,000 payment in December 2009. The Director concluded

> that the testimony, the documents and the payments made by [Mary] do not demonstrate that [Mary] received fair market value for the assets transferred to [Paula] or that there was any pre-existing agreement to pay [Gina] or the granddaughter. I FIND that the full amount transferred to them has not been demonstrated to be for fair market value and is subject to a transfer penalty.

Mary argues that the Care Agreement rebuts the presumption "that the transfer of assets for care and services was for no

[3] Paula worked evenings and claimed that Reba cared for her grandmother when she was not available.

consideration . . . ." The Director found that "[t]he record does not delineate how the $1,200 rate was reached when the contract was signed in 2005 nor what was to be done and for what length of time to earn $1,200 per month. Moreover, the Care Agreement does not address the payments to Gina and Reba. In evaluating whether Mary had overcome the presumption that assets were transferred to establish Medicaid eligibility, all of the transfers to family members made during the look-back period must be scrutinized. The transfers to Gina were not made pursuant to any agreement and the large amounts and random nature of the payments do not support the conclusion that they were made for services provided at fair market value. The payments to Reba are even more questionable. As the Director noted:

> While at that age, the granddaughter may be suited for babysitting at sporadic intervals, there is no evidence that she served three nutritiously balanced meals a day, . . . provided assistance with bathing . . . and assisted in investments, bill paying and money management especially when she would have been in school for five of the months in which she received payment.

We find Mary's argument that the Division's ruling must be reversed as it is contrary to the finding of the ALJ, lacks sufficient merit to warrant discussion beyond the following brief comments. R. 2:11. We owe substantial deference to the

decisions of an administrative agency, not the findings of an ALJ. An ALJ is given special deference by an agency and a reviewing court only regarding credibility determinations made based on live testimony. Clowes v. Terminix, Int'l, Inc., 109 N.J. 575, 587 (1988). An agency head is free to "adopt, reject or modify" an ALJ's recommended decision, N.J.S.A. 52:14B-10(c); Clowes, supra, 109 N.J. at 587, so long as the agency gives due consideration to the ALJ's findings, bases its decision on substantial evidence in the record and indicates how it weighed that evidence. N.J. Dep't of Pub. Advocate v. N.J. Bd. of Pub. Utilities, 189 N.J. Super. 491, 501 (App. Div. 1983).

In rejecting the ALJ's findings, the Director set forth the evidence supporting her finding that Mary did not receive fair market value in return for the assets transferred to Paula, Gina and Reba. We are satisfied that the Division did not abuse its discretion in rejecting these findings and imposing a transfer penalty based on Mary's disposal of financial resources at less than fair market value during the look-back period.

Affirmed.