

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4291-13T4

C.C.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE AND  
HEALTH SERVICES,

Respondent-Respondent,

and

OCEAN COUNTY BOARD OF SOCIAL SERVICES,

Respondent.

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Submitted May 19, 2015 – Decided May 29, 2015

Before Judges Fisher and Accurso.

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

Melanie Persich (Schutjer Bogar, LLC),  
attorney for appellant.

John J. Hoffman, Acting Attorney General,  
attorney for respondent (Melissa H. Raksa,  
Assistant Attorney General, of counsel;  
Jennifer Simons, Deputy Attorney General, on  
the brief).

PER CURIAM

Petitioner C.C. appeals from a final agency decision of the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), affirming a transfer penalty imposed on her application for Medicaid benefits. She concedes that a penalty is appropriate; she argues only that controlling federal law mandates a reduction of the penalty because a portion of the transferred assets were returned to pay for her care. Because both federal and State law require the return of all assets transferred during the look-back period in order to modify the penalty, we affirm.

Following petitioner's request for a fair hearing upon the denial of her application for Medicaid benefits by the Ocean County Board of Social Services, the matter was transferred to the Office of Administrative Law and heard on a stipulated record. The parties agree that petitioner sold her residence during the five-year look-back period, see 42 U.S.C.A. § 1396p(c)(1), and gave half the proceeds, \$99,233.75, to her nephews. When she applied for Medicaid, the Board imposed a 387-day period of ineligibility calculated in accordance with 42 U.S.C.A. § 1396p(c)(1)(E)(i)(I) and (II) and N.J.A.C. 10:71-

4.10(m)(1).<sup>1</sup> During that ineligibility period, the parties agree that petitioner's nephews returned \$17,000 to her, which was used to pay for her care.

Noting that both 42 U.S.C.A. § 1396p(c)(2)(C) and N.J.A.C. 10:71-4.10(e)(6) provide that no transfer penalty shall be applied if "all assets transferred for less than fair market value have been returned" and that DMAHS issued two Medicaid communications almost two years before petitioner applied for Medicaid benefits explaining that adjustments to the penalty period cannot be made absent the return of all assets,<sup>2</sup> the

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<sup>1</sup> The formula is "the number of months equal to the total, cumulative uncompensated value of all assets transferred by the individual, on or after the look-back date, divided by the average monthly cost of nursing home services." See H.K. v. Dept. of Human Servs., 184 N.J. 367, 381 (2005) (quoting N.J.A.C. 10:71-4.10(m)(1)). The average cost of nursing home care in New Jersey during the period at issue was \$7757 per month, see Div. of Med. Assistance and Health Servs., Medicaid Communication No. 12-16 (December 10, 2012), available at [http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2012/12-16\\_Increase\\_Penalty\\_Divisor\\_Effective\\_November\\_1\\_2012.pdf](http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2012/12-16_Increase_Penalty_Divisor_Effective_November_1_2012.pdf) (last visited May 19, 2015), or \$256 per day.

<sup>2</sup> See Div. of Med. Assistance and Health Servs., Medicaid Communication No. 10-06 (July 19, 2010), available at [http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2010/10-06\\_Clarification\\_of\\_Medicaid\\_Communication\\_10-02\\_Return\\_of\\_Transferred\\_Assets-Resources.pdf](http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2010/10-06_Clarification_of_Medicaid_Communication_10-02_Return_of_Transferred_Assets-Resources.pdf) (last visited May 19, 2015); Div. of Med. Assistance and Health Servs., Medicaid Communication No. 10-02 (May 26, 2010), available at [http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2010/10-02\\_Resource\\_Assessments\\_and\\_Calculation\\_of\\_Resource\\_Transfer\\_Penalty\\_Periods.pdf](http://www.state.nj.us/humanservices/dmahs/info/resources/medicaid/2010/10-02_Resource_Assessments_and_Calculation_of_Resource_Transfer_Penalty_Periods.pdf) (last visited May 19, 2015).

administrative law judge determined that no reduction was possible and affirmed the decision of the Ocean County Board of Social Services. The Director of DMAHS adopted the decision in its entirety, ruling that reduction of the penalty based on a partial return of transferred assets "is in violation of 42 U.S.C.A. § 1396 p(c)(2)(C)."

Petitioner appeals arguing that "even if New Jersey law does restrict the return of transferred funds . . . , federal law trumps New Jersey's law" and thus the \$17,000 returned to petitioner should reduce the penalty period. Petitioner's argument ignores that federal and State law are consistent in requiring the return of all assets transferred for less than fair market value in order to reduce the transfer penalty.<sup>3</sup> See

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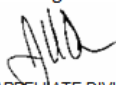
<sup>3</sup> As the State correctly notes, even were we to disregard the clear language of the Medicaid laws and agree with the equities of petitioner's argument, the result here would not change. Had petitioner transferred \$17,000 less to her nephews, she would have been able to pay for her care for roughly another two months, meaning she would not have run out of funds in June 2012, and would instead have become otherwise Medicaid eligible on August 1, 2012. So instead of receiving a 387-day transfer penalty effective June 1, 2012, the date she did run out of funds, petitioner would have only received a 322-day penalty (\$99,233.75 minus \$17,000 equals \$82,233.75 divided by \$256 per day equals 322 days) effective August 1. Under this scenario, petitioner would have become Medicaid eligible on June 19, 2013, four days earlier than the June 23, 2013 date imposed by the Ocean County Board of Social Services. Petitioner's contention that the \$17,000 should reduce her transfer penalty without altering the date she would otherwise have been eligible for benefits reveals the logical flaw in her equitable argument.

42 U.S.C.A. § 1396 p(c)(2)(C); N.J.A.C. 10:71-4.10(e)(6).

Because the decision of the administrative agency is supported by sufficient credible evidence on the record as a whole and petitioner's argument is without sufficient merit to warrant discussion in a written opinion, we affirm the decision of the Director of DMAHS. R. 2:11-3(e)(1)(D) and (E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION