

Petitioner applied for Medicaid benefits in April 2015. She entered a nursing facility in June 2015 and was found eligible that month. Petitioner had transferred her home and her car to her son prior to applying for benefits. Though she does not contest the imposition of a penalty for the car, Petitioner claims that the home transfer was exempt from penalty under the caregiver exemption. By notice dated August 10, 2015, Burlington County denied the exemption and imposed a penalty of \$189,000. Petitioner sought a fair hearing.¹

The New Jersey regulations regarding the caregiver exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv), N.J.A.C. 10:71-4.7(d) 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.

In this matter, the facts show that Petitioner's son moved in with his mother and father in 2007. The medical records are inconsistent from 2011 to 2014 with a number of them noting Petitioner is oriented to person, place and time. R-1 at 74-90. Other records show Petitioner suffered from memory loss and had difficulty with concentration. P-15.² Petitioner's expert witness stated that though Petitioner had been previously diagnosed with dementia, she did not need assistance with her activities of daily living to the level of requiring nursing home care until 2011. P-13. While Petitioner needed assistance in all activities of daily living for more than two years prior to becoming institutionalized, it appears that Petitioner's husband was able to care for Petitioner until 2012 when he was diagnosed with Parkinson's Disease and his own health became compromised. ID at 3 and P-6. At that point, Petitioner's son assumed the role of providing assistance toileting,

¹ Petitioner brought a federal action on the imposition of the penalty at the same time and she requested that the OAL matter be placed on the inactive list. The federal matter was dismissed in May 2017.

² It is unclear what medical records were provided to Burlington County prior to the August 2015 letter imposing a transfer penalty. However, a good number of Petitioner's and her husband's medical records have facsimile of June 2016, June 2017 and January 2018 and printing dates in June 2017.

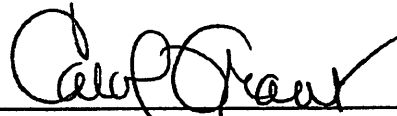
dressing, preparing meals, administering medication, and transferring her throughout the day. P-26. Both Petitioner's and her husband's health declined over this time period until his death in January 2015.

Based on my review of the record and the applicable law, I hereby ADOPT the Initial Decision finding that the specific facts and circumstances of this case set forth in the record warrant an exemption from transfer penalty for the home. The penalty for the transfer of the car was not challenged and remains in force.

THEREFORE, it is on this 23rd day of MAY 2018

ORDERED:

That the Initial Decision is hereby ADOPTED.



Carol Grant, Deputy Director
Division of Medical Assistance
and Health Services