

## **2022 N.J. AGEN LEXIS 396**

State of New Jersey , Department of Human Services , Division of Medical Assistance and Health Services , Po  
Box 712 , Trenton, NJ 08625-0712

May 2, 2022, Decided

OAL DKT. NO. HMA 04378-2020

### ***New Jersey Office of Administrative Law***

#### **Reporter**

2022 N.J. AGEN LEXIS 396 \*

**K.L., PETITIONER,**

**v.**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES AND  
ATLANTIC COUNTY DEPARTMENT OF FAMILY AND COMMUNITY  
DEVELOPMENT, RESPONDENTS.**

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### **Core Terms**

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life estate, cape, crest, eligibility, nursing facility, fair market value, lease agreement, ownership, holder, rebut,  
deed, renovate

### **Counsel**

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[\*1] [NO COUNSEL IN ORIGINAL]

**Panel:** Jennifer Langer Jacobs, Assistant Commissioner, Division of Medical Assistance and Health Services

### **Opinion**

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#### **ADMINISTRATIVE ACTION**

#### **FINAL AGENCY DECISION**

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 4, 2021, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated February 13, 2020, the Atlantic County Department of Family and Community Development (Atlantic County) granted Petitioner's April 30, 2019 Medicaid application with eligibility as of October 7, 2020. A penalty of 555 days between April 1, 2019 and October 6, 2020 was assessed resulting from the transfer of assets, totaling \$ 195,593.51, for less than fair market value during the five-year look-back period. The transfer of assets stem from (1) Petitioner's failure to obtain the fair market value for an alleged life estate held by Petitioner when the property

Cathyanne Pisciotta

she formerly owned in Cape May, New Jersey (Cape May property) was sold on May [\*2] 27, 2016; (2) a September 18, 2016 transfer from Petitioner's PNC Certificate of Deposit (CD) to her grandson, M.T., <sup>1</sup> in the amount of \$ 27,994.51; (3) a September 23, 2017 transfer from Petitioner's first OceanFirst Bank accounts to M.T. in the amount of \$ 66,293.74; (4) a September 23, 2017 transfer from Petitioner's second OceanFirst Bank account to M.T. in the amount of \$ 18,749.85; (5) a September 23, 2017 transfer from Petitioner's second OceanFirst Bank account to M.T. in the amount of \$ 3,000; and (6) a September 23, 2017 transfer from Petitioner's OceanFirst Bank CD to M.T. in the amount of \$ 28,740.54. Atlantic County subsequently amended the transfer penalty to 604 days after it was discovered that an additional transfer from a Crest Savings Bank CD was made on March 20, 2018 in the amount of \$ 17,228.09. Thus, the total transfer amount penalized by Atlantic County in this matter is \$ 212,821.60.

The Initial Decision determined that Petitioner had shown that she did not own a life estate in the Cape May property and thus, should not have been penalized for the value of life estate at the time the property was sold by M.T. on May 27, 2016. The Initial Decision further [\*3] determined that Petitioner had shown that a portion of the transfer from Petitioner's PNC CD, specifically \$ 17,645.99 of the \$ 27,994.51 total amount from this CD, was used for improvements to M.T.'s home for Petitioner's benefit. Lastly, the Initial Decision found that the remaining transfers, including the balance of \$ 10,348.52 from the PNC CD, \$ 66,297.74 from Petitioner's first OceanFirst Bank account, \$ 21,749.85 from Petitioner's second OceanFirst Bank account, \$ 28,740.54 from Petitioner's OceanFirst Bank CD, and \$ 17,228.09 from Petitioner's Crest Savings Bank CD were properly penalized as transfers, as Petitioner failed to rebut the presumption that these transfers were done for the purposes of qualifying for Medicaid. Based upon my review of the record, I hereby ADOPT in part and REVERSE in part the findings and conclusions of the Administrative Law Judge (ALJ).

In determining Medicaid eligibility for someone seeking institutionalized benefits, counties must review five years of financial history. Under the regulations, "[Of an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise [\*4] transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period," a transfer penalty of ineligibility is assessed. [N.J.A.C. 10:71-4.10\(c\)](#). "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." [E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 \(App. Div. 2010\)](#). "[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." [Ibid.](#) Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." [Ibid.](#)

The applicant "may rebut the presumption that assets were transferred to establish Medicaid eligibility by presenting convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose." [N.J.A.C. 10:71-4.10\(j\)](#). The burden of proof in rebutting this presumption is on the applicant. [Ibid.](#) The regulations also provide that "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, [\*5] the presumption shall not be considered successfully rebutted." [N.J.A.C. 10:71-4.10\(1\)2](#).

As it relates the alleged life estate, the record shows that by deed, signed on or about December 2, 2008, Petitioner transferred ownership of her home in Cape May, New Jersey to M.T. J-1. On the same date, Petitioner entered into a lifetime lease with M.T. J-2. The lease agreement provided that Petitioner was a tenant on the property with "a lifetime right to exclusively use and occupy the property" and "shall have the absolute right to use and occupy the property during her lifetime." [Ibid.](#) The lease agreement "shall only expire upon [Petitioner's] death." [Ibid.](#) On December 3, 2014, M.T. transferred ownership of the Cape May property to himself and his wife. P-1. On December 21, 2015, M.T. and his wife purchased a property in Linwood, New Jersey (Linwood property) and a loan of \$ 212,000 was taken out the Cape May property. P-2 and P-3. The Cape May property was sold on May 27, 2016 for \$ 270,000 and Petitioner began residing with M.T. and his wife at the Linwood property. J-3 and

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<sup>1</sup> Prior to Petitioner's passing, M.T. was appointed Petitioner's power of attorney (POA). After her passing, he was appointed as the administrator of Petitioner's estate.

ID at 4. Atlantic County argues that the lease created a life estate in the Cape May property that was owned by Petitioner, as language of a life estate was used in the lease agreement. ID at 5. Accordingly, Atlantic County determined that the fair market value of the life estate was \$ 50,814.87.<sup>2</sup> Ibid.

The Initial Decision found that the lease agreement did not create a life estate and therefore, a penalty should not have been imposed as result of the May 27, 2016 sale of the Cape May property. I concur. It is a long-standing principle that life estates have value. See e.g., In re Estate of Romnes, 79 N.J. 139, 150 n.4 (1979); In re Estate of Lichtenstein, 52 N.J. 553, 563 (1968); Neiman v. Hurff, 11 N.J. 55, 62-63 (1952); Camden v. Williams, 61 N.J.L. 646, 647 (N.J. 1898). However, as noted by the ALJ, a life estate is created by deed, can be freely alienated, and is taxable. N.J.S.A. 46:3-5 and -13. N.J.S.A. 46:3-13 specifically provides that "in the absence of other words in the deed clearly indicating an intention to limit the estate to the life of the grantee, [it is to] be considered [\*6] as presumptive evidence that the grantor intended thereby to convey an estate in fee simple. . . ." Although the lease agreement contains language attributable to a life estate, neither the deed nor the lease agreement make reference to the other document. The deed itself does not contain any provision granting a life estate to Petitioner and it contains no restrictions on the ownership, use, or sale of the Cape May property. J-1. Without language to the contrary in the deed, it is presumed that the transfer of the Cape May property was meant to be conveyed to M.T. in fee simple. Accordingly, I FIND that the lease agreement in this matter created a lifetime lease in Petitioner's favor, and Petitioner did not own a life estate interest in the Cape May property. Therefore, I additionally FIND that the imposition of a transfer penalty related to the sale of the Property by M.T. on May 26, 2016 was inappropriate.

As it relates to the transfer of the PNC CD, the Initial Decision found that a portion of the \$ 27,994.51 balance contained in the CD was used for renovations to the Linwood property and that those renovations were for Petitioner's benefit in order to make the property "accessible for [P]etitioner." ID at 7. Specifically, the renovations included a fence, railings on a deck, removal of trees, repair and replacement of a heating system, the cleaning of gutters, and medical supplies. Ibid. and P-4. The total amount of the renovations were \$ 17,645.99. I disagree with the Initial Decision's assessment.

The renovations were general improvements for a property that is owned and occupied by M.T. and his wife. The improvements simply beautified the property and, more than likely, increased the value of M.T.'s property. There is nothing in the record that demonstrates that any [\*7] of these improvements or expenses were solely done for Petitioner's benefit. In fact, none of the improvements or expenses shown by M.T. made the property accessible for Petitioner, as M.T. alleged in his testimony.

Moreover, the transfer of the funds in Petitioner's PNC CD occurred on September 18, 2016. With the exception of the invoice for supplies from Lincoln Medical Supply,<sup>3</sup> all of the invoices, estimates, proposals, and payments provided occurred prior to the transfer being made. P-4. The earliest was dated in January 2016. Ibid. The funds from Petitioner's PNC CD, thus, could not have been used to pay for these improvements or expenses. Accordingly, there is no nexus between the transfer from the PNC CD and the payment of any of the improvements or expenses noted by Petitioner.

While the Initial Decision notes that it does appear that M.T. and his wife cared for Petitioner at their home, there is nothing in the record that shows that an agreement between Petitioner and M.T. existed, wherein Petitioner agreed to pay or reimburse M.T. for these improvements and expenses as a result of the care provided to her by M.T. and his wife. See N.J.A.C. 10:71-7.10(b)6ii (providing that "[i]n regard to transfers [\*8] intended to compensate in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation." This "presumption may be rebutted by the presentation of credible

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<sup>2</sup> Atlantic County determined that the value of the Cape May property was \$ 252,245.58, which is the net amount that M.T. and his wife received from the sale of the property (\$ 40,296.76) added to the \$ 211,948.82 mortgage on the property. ID at 5. The determined value of the property multiplied by 0.20145, which is the life estate value for the Life Estate Remainder Interest Table, resulted in the life estate's value of \$ 50,814.87. Ibid.

<sup>3</sup> I note that the invoice does not contain any information showing that the supplies that were purchased were for Petitioner. The customer's name is listed as "Cash, Retail." P-4.

documentary evidence preexisting the delivery of care or services indicating the type and terms of compensation [and] the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community." ). Therefore, the care and services provided by M.T. and his wife are presumed to have been delivered to Petitioner without compensation.

Petitioner has, thus, failed to show that any of the funds from the PNC CD, which totaled \$ 27,994.51, were used solely for any other reason than to establish Medicaid eligibility. Accordingly, I FIND that the imposition of a transfer penalty related to the total amount of this transfer was appropriate.

In relation to the four OceanFirst Bank transfers made on September 23, 2017, <sup>4</sup> Petitioner has failed to show that these transfers were made solely for some other purpose than to establish Medicaid eligibility. Initially, M.T. testified that nursing [\*9] home care for Petitioner was contemplated after M.T., his family, and Petitioner moved into the Linwood property in December 2015. Prior to these four transfer in September 2017, M.T. discussed Petitioner's placement in a nursing facility, and she appears to have begun residing in the nursing facility in March 2018, six months after the transfers occurred. Moreover, no documentation was presented that shows that the transferred funds were used to pay for Petitioner's care. Medicaid eligibility, thus, appears to have been a consideration during the time in which these transfers occurred, and Petitioner has failed to meet her burden in this matter.

Petitioner, however, argues that the funds were transferred to M.T. for fear that a third party, K.M., <sup>5</sup> who appears to be a friend of Petitioner or her husband, would close out the accounts and take the funds contained therein. ID at 15. M.T. testified that after he was told by Petitioner's nursing facility to consolidate Petitioner's accounts, K.M. closed out the Crest Savings Bank CD, of which she was allegedly named as a joint account holder with Petitioner, and that made him fearful she would do the same to the remaining accounts. Ibid. As noted by the ALJ, all of the OceanFirst Bank account transfers occurred six months prior to K.M. closing the Crest Savings Bank CD, which occurred on March 20, 2018. Ibid. Petitioner's argument in her exceptions that M.T. was justified in his transfer of the OceanFirst Bank accounts because M.T.'s fear of K.M. taking the funds from the Crest Savings Bank CD ultimately came to fruition is untenable. K.M. was an account holder on the Crest Savings Bank CD. While M.T. testified that K.M.'s name was removed from the Crest Savings Bank CD at one time, no evidence was provided to show that her access to this CD was ever removed. Moreover, there is no evidence that K.M. was an account holder on any other account held by Petitioner, aside from the Crest Savings Bank CD. Therefore, it would have been nearly impossible for K.M. to have withdrawn any of the funds on Petitioner's other accounts, as she had no legal access to those accounts.

Further, this explanation for withdrawing the funds does not explain why M.T., as Petitioner's POA, did not open a new account solely in Petitioner's name in order to combine all of Petitioner's funds into a single account. Instead, M.T. deposited Petitioner's funds into his own account that was shared with his wife. Once the funds were transferred into an account that was not owned by Petitioner, Petitioner's ownership rights over the [\*10] funds ceased, and M.T. had no obligation to use the funds on Petitioner's behalf. It is irrelevant that M.T. now testifies that he always viewed these funds as Petitioner's. The funds were comingled in Petitioner's personal account and as a result, Petitioner no longer had ownership rights or access to those funds.

Moreover, when M.T. was allegedly instructed by Petitioner's nursing facility to return the funds, he failed to return all of the funds that were improperly transferred into his account. Any reduction of the transferred funds is predicated on whether "[a] satisfactory showing is made to the state . . . that . . . (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). See

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<sup>4</sup> These transfers to M.T. includes a transfer of \$ 28,740.54 from Petitioner's OceanFirst Bank CD, a transfer from Petitioner's first Ocean First Bank account in the amount of \$ 66,293.74; a transfer from Petitioner's second OceanFirst Bank account in the amount of \$ 18,749.85; and a transfer from Petitioner's second OceanFirst Bank account in the amount of \$ 3,000. The total of these four transfers is \$ 116,784.13.

<sup>5</sup> The Initial Decision and Petitioner's representatives refer to the joint account holder of the Crest View CD as "K.M."; however, the Account Transfer image provided by Petitioner's representatives show the initials "K.G." in relation to the joint account holder of the Crest View CD. J-8. It appears from the record that these initials are references to the same individual.

also N.J.A.C. 10:71-4.10(e)(6)(iii). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all of the assets to the individual, the penalty continues uninterrupted. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015 (finding that arguments for the partial reduction of a ten year, four month, and thirteen day penalty "lacked any legal support"). Petitioner has failed to demonstrate that all of the funds have been returned to Petitioner. While Petitioner argues that a majority of the funds were either directly returned to Petitioner [\*11] or were used to pay for Petitioner's nursing facility, all of the funds needed to be returned directly to Petitioner. The two payments alleged by M.T. to have been made to Petitioner's nursing facility were not directly returned to Petitioner, and there is no nexus between the transfers from Petitioner's accounts and any of the payments allegedly made to Petitioner's nursing facility by M.T. on Petitioner's behalf. Accordingly, I FIND that the penalty imposed by Atlantic County in relation to the four transfers from Petitioner's OceanFirst Bank accounts to M.T., totaling \$ 116,784.13, was appropriate.

Lastly, K.M. was a joint account holder on the Crest Savings Bank CC, and Petitioner did not present any documentation showing that Petitioner had restricted access to the CD. In fact, Petitioner included K.M. as a beneficiary for the funds contained in the Crest Savings Bank CD and therefore, asserted ownership over the funds contained therein. ID at 16. Petitioner has provided no documentation showing that the funds were stolen by K.M. K.M. did not provide testimony in this matter regarding the withdrawal. There is nothing in the record showing any attempt by Petitioner to have the funds returned to her following the transfer or if the funds were used for Petitioner's benefit. I additionally note that the funds were withdrawn from the Crest Savings Bank CD in March 2018, which was the same month that Petitioner began residing in her nursing facility and when Medicaid eligibility would have been a consideration. As no documentation was presented to show the purpose of this transfer and the funds were not returned to Petitioner, I FIND that the imposition of a transfer penalty in relation to this transfer is appropriate.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT in part and REVERSE in part the ALJ's recommended decision, as detailed herein. Specifically, I FIND that Petitioner did not own a life estate interest in the Cape May property and therefore, the penalty imposed in relation to the sale of the Cape May property was inappropriate. I further FIND that Petitioner has failed to rebut the presumption that the PNC CD transfer, the four OceanFirst Bank account transfers, and the Crest Savings Bank CD transfer, totaling \$ 162,006.73, were done for the purposes [\*12] of qualifying for Medicaid benefits, and, therefore, the imposed penalty period in relation to these six transfers is appropriate.

THEREFORE, it is on this 2nd day of MAY 2022

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part, as set forth herein.

Jennifer Langer Jacobs, Assistant Commissioner

Division of Medical Assistance and Health Services

New Jersey Office of Administrative Law

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