

Family and Community Development (Atlantic County) granted Petitioner's May 12, 2023, Medicaid application with eligibility as of May 6, 2023. However, a penalty of 5 days was assessed resulting from the transfer of assets, totaling \$2,021.96. The transfer of assets was related to two different purchases from Elderwear: one on April 26, 2023, for \$1,689.62 and the other on April 27, 2023, for \$332.34. ID at 8.

In determining Medicaid eligibility for someone seeking institutionalized benefits, counties must review five years of financial history. Under the regulations, "[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise 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, the presumption shall not be considered successfully rebutted.” N.J.A.C. 10:71-4.10(i)2.

In the present matter, Petitioner, through their Designated Authorized Representative (DAR), submitted a Medicaid application to Atlantic County on May 12, 2023. ID at 8. Petitioner was found eligible as of May 1, 2023, but Atlantic County issued a five-day penalty for transfers in the amount of \$2,021.96. Ibid. The penalty was assessed based on two different purchases from a company called Elderwear; one on April 26, 2023, for \$1,689.62 and the other on April 27, 2023, for \$332.34. Ibid. On April 26, 2023, Josh Rosenberg, an administrator at the nursing home, placed an order for the following items:

Samsung tablet	\$499.99
Keyboard & mouse combo for tablet	\$54.99
Ansten headphones with docking station	\$164.99
Men’s black half elastic waist pants	\$32.99
Men’s blue half elastic waist pants	\$32.99
Cap	\$14.99
Belt	\$18.99
Men’s black Propet Viator sneakers	\$95
39” smart TV with remote	\$424.99
Men’s beard trimmer	\$100
Television wall mount	\$100

ID at 8-9.

The next day, on April 27, 2023, Rosa Palmer, a social worker at the nursing home, placed an order for the following items:

2xl Nylon windbreaker with snaps	\$44.99
Two 2XL solid men’s dress shirts	\$71.98
Timex watch	\$89.99
Six pairs of diabetic socks	\$43.50
XL men’s flannel pajama bottoms	\$24.99
Flashlight	\$24.99

ID at 9. The invoices for the purchases do not provide a specific description of each item that was purchased. ID at 9.

Yetti Roth, a Future Care employee based out of their Lakewood, New Jersey office, spoke with Petitioner on the telephone sometime before the orders were placed to give him ideas as to what he could purchase. Ibid. She did not discuss prices with Petitioner and Petitioner was not provided an alternate to Elderwear. Ibid. Petitioner was not shown a catalog with pictures or prices to inform Petitioner of exactly what Petitioner was ordering or the cost. Ibid. Ms. Roth testified that the orders were placed because they were trying to get Medicaid eligibility for Petitioner and Petitioner was over the limit. Ibid.

The Initial Decision discussed the invoices from Elderwear and concluded that they lacked specificity as to precisely what was purchased by Petitioner to make a determination as to fair market value. ID 7-8. The Initial Decision went on to state that it is inherently suspect that Elderwear has no website, catalog, or price list that could be reviewed and that Petitioner did not establish that the transfers were for fair market value. Ibid. The Initial Decision found that resources in the amount of \$2,021.96 were transferred during the look-back period, which created a rebuttable presumption that the resources were transferred to establish Medicaid eligibility. ID at 11. Ultimately, the Administrative Law Judge concluded that Petitioner did not rebut the presumption that the transfers were done for the purpose of qualifying for Medicaid and affirmed the imposition of the five-day penalty period from May 1, 2023, to May 5, 2023. ID at 11-12.

Petitioner filed exceptions to the Initial Decision. In summary, Petitioner takes exceptions to the Administrative Law Judge's 1) finding that the invoices from Elderwear lack specificity as to precisely what was purchased by petitioner to make a determination as to fair market value, 2) determination that Petitioner did not establish that the transfers were for fair market value, 3) determination that it is the applicant's burden to show that the items were purchased for fair market value, and 4) that the cases cited by Petitioner

were inapplicable to the facts of this case and that they pre-date the Deficit Reduction Act.

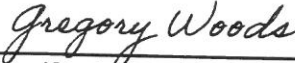
I FIND that Petitioner did not overcome their burden to establish that the purchases were for fair market value and therefore the transfer penalty assessed by Atlantic County was appropriate. N.J.A.C. 10:71-4.10(c) states that the fair market value of the asset shall be ascertained and fully documented. Subsection 4.10(e)(6) goes on to state that the application of a transfer penalty shall not apply when a satisfactory showing is made, to the State, that the individual intended to dispose of the assets either at fair market value or for other valuable consideration. When a transfer of assets is made during the look-back period, a rebuttable presumption is created. N.J.A.C. 10:71-4.10(j). It is Petitioner's obligation to present evidence to rebut that presumption and establish fair market value. I agree with the Initial Decision that the Eldercare invoices lacked specificity as to precisely what was purchased by Petitioner to make a fair market value determination.

Thus, based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision and FIND that the transfer penalty imposed on the two purchases totaling \$2,021.96 was appropriate.

THEREFORE, it is on this 15th day of MARCH, 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

 OBO JLJ

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