

[REDACTED]
APPELLANT

v.

* BEFORE SUSAN A. SINROD,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-[REDACTED]10A-18-08321

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DECISION

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STATEMENT OF THE CASE

The Appellant applied for Long Term Care (LTC) Medical Assistance (MA) on December 29, 2017. On February 9, 2018, the [REDACTED] (Local Department) approved the Appellant for LTC MA beginning in January 2018, but imposed a penalty from January 1, 2018 through January 16, 2018 because it alleged that the Appellant transferred assets for less than fair market value during the five-year look-back period. On March 12, 2018, [REDACTED] the Appellant's son and guardian, appealed this determination.

I conducted a hearing on April 23, 2018, at the Office of Administrative Hearings- [REDACTED] Street, [REDACTED] Maryland. Code of Maryland Regulations (COMAR) 10.01.04. Mr. [REDACTED] represented the Appellant, who was not present. [REDACTED] Long Term Care Worker, represented the Local Department.

The Administrative Procedure Act, the procedures for Fair Hearing Appeals under the Maryland State Medical Assistance Program, and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 10.01.04 and 28.02.01.

ISSUE

Did the Local Department properly impose a 16 day penalty upon the Appellant's LTC MA benefits from January 1 through January 16, 2018?

SUMMARY OF THE EVIDENCE

Exhibits

The Local Department submitted its Summary for Appeal Hearing which was admitted into evidence as LD Ex. #1 with the following page-numbered attachments:

- 1 Table of Contents
- 2 Summary for Appeal Hearing, undated
- 3 Notice of Hearing, dated April 3, 2018
- 4 Request for Hearing, received March 12, 2018
- 5-6 Notice of Eligibility, dated February 9, 2018
- 7-8 Notice of Non-Coverage of Nursing Facility Services Due to Disposal of Assets for Less Than Fair Market Value, dated February 9, 2018
- 9-10 Transfer/Disposal of Assets Worksheet, received by the Local Department on February 9, 2018
- 11-27 Long Term Care/Waiver Medical Assistance Eligibility Application, received by the Local Department on December 29, 2017
- 28-29 Request for Information to Verify Eligibility, dated January 3, 2018
- 30-31 Request for Information to Verify Eligibility, dated January 17, 2018
- 32 Notice of Extension of Time for Eligibility Decision, dated January 26, 2018
- 33-35 Asset Verification Services (AVS) Results Report

- 36-40 Bank Statement from ██████████ Bank, dated March 20, 2017, with copies of checks
- 41 Letter from ██████████ addressed "To Whom it may Concern," received by the Local Department on January 12, 2018
- 42 Check stub, for check number ██████ dated March 4, 2017
- 43-50 Case Narrative, from January 2, 2018 through March 22, 2018
- 51-52 Excerpt from the Maryland Medical Assistance Manual, Section 800.17(b), revised July 2012

LD Ex. #2 Excerpt from Manual Release No. MR-59, dated April 2013

The Appellant submitted the following exhibits, which were admitted into evidence:

- App. Ex. #1 Manual Release No. MR-159, dated April 2013
- App. Ex. #3-¹ Copy of ██████ Bank check number ██████ to ██████ in the amount of \$5,200.00, dated March 4, 2017
- App. Ex. #4- Certificate of Title to 2005 Nissan, issued April 9, 2017
- App. Ex. #5- Bank Statement of ██████████ Bank, dated March 20, 2017
- App. Ex. #6- Statement from ██████████ Home Mortgage, dated December 18, 2017
- App. Ex. #7- Notice of Impending Foreclosure Sale, sale date January 18, 2018
- App. Ex. #8- Final Loss Mitigation Affidavit, dated March 17, 2017
- App. Ex. #9- Two Statements from ██████ dated December 28, 2017 and January 29, 2018
- App. Ex. #10- ██████████ banking activity printout, showing activity from February 6, 2018 through January 22, 2018
- App. Ex. #11- Order of the Circuit Court For ██████ County, Maryland, appointing ██████████ as the guardian of the person and property of the Appellant, dated August 18, 2015²

¹ I inadvertently skipped App. Ex. #2 when labeling the exhibits during the hearing.

² Mr. ██████ gave me this order just prior to the hearing which I placed in the file to document that Mr. ██████ was the authorized representative of the Appellant for purposes of this appeal. I did not mark it or verbally admit it into evidence. The Local Department did not dispute the Order or that Mr. ██████ was the authorized representative of the Appellant. Therefore, I subsequently marked the Order as App. Ex. #11 and consider it to be admitted into evidence, as it is relevant to the merits of this case.

Testimony

██████████ LTC Worker, testified on behalf of the Local Department. Mr. ██████████ testified on behalf of the Appellant.

FINDINGS OF FACT

After considering the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Appellant resides in a nursing facility.
2. ██████████ is the Appellant's son. By virtue of an Order dated August 18, 2015, the Circuit Court for ██████████ County appointed Mr. ██████████ to be the Guardian of the Appellant's person and property, because physicians' certificates established that she lacked sufficient capacity to make or communicate responsible decisions concerning her person and property due to dementia, and was unable to manage her property and affairs (Order).
3. At all relevant times, the Mr. ██████████'s daughter lived with her two young children and the father of her two young children (the father), in the father's grandmother's house. The Appellant's daughter's vehicle had been repossessed. The father was involved in a motor vehicle accident which totaled their only vehicle that he had been driving without insurance. They could not afford another vehicle. The younger of the two children had continuing health concerns.
4. At some point, the father's grandmother passed away leaving a delinquent mortgage and a pending foreclosure action against her home. This is the home in which Mr. ██████████'s daughter, her two children and the father lived.

5. On February 24, 2017, Mr. [REDACTED] wrote a check from the Appellant's checking account at [REDACTED] Bank to himself for \$5,000.00 for the purpose of purchasing a vehicle for his daughter. That check cleared the Appellant's account on March 3, 2017.
6. After the check cleared the Appellant's account, she still had a balance in that account of \$58,754.48.
7. On March 4, 2017, Mr. [REDACTED] wrote a check from his own checking account to [REDACTED] in the amount of \$5,200.00 for the purchase of a 2005 Nissan for Mr. [REDACTED]'s daughter. On April 19, 2017, the 2005 Nissan was titled in Mr. [REDACTED]'s daughter's name.
8. On December 29, 2017, the Appellant applied for LTC MA with the Local Department.
9. On February 9, 2018, the Local Department informed the Appellant that she was approved for LTC MA for the period beginning January 2018 through December 2018. Also on February 9, 2018, the Local Department informed the Appellant that it was imposing a 16 day penalty period from January 1, 2018 through January 16, 2018 as a result of the \$5,000.00 transfer from the Appellant's checking account to Mr. [REDACTED] for less than fair market value.

DISCUSSION

An institutionalized person's financial eligibility for MA is determined, in part, on the basis of the countable resources of members of the assistance unit.³ COMAR 10.09.24.10B(1). In evaluating an applicant's resources, the Local Department is required, under circumstances that are applicable in this case, to review the applicant's finances for the 60-month period prior to the month of application (the look-back period). COMAR 10.09.24.08-1B(2)(a)(ii). If, at any

³"Resources" means "accumulated personal wealth over which a person has the authority or power to liquidate his interest, including cash savings, savings accounts, certificates of deposit, money market certificates, checking accounts, stocks, bonds, cash value of life insurance, burial plots, prepaid burial plans, real property, personal property, mortgages, and mutual funds." COMAR 10.09.24.02B(53).

time during the look-back period, an applicant has disposed of an asset for less than fair market value, the Local Department may impose a penalty period, during which the applicant is ineligible for nursing facility services. COMAR 10.09.24.08-1B(1). The penalty period is for the number of months “equal to the total, cumulative, uncompensated value of all assets transferred, divided by the average monthly cost, to a private patient at the time of application for Medical Assistance, of nursing facility services in the State.” COMAR 10.09.24.08-1B(5).

For a transfer on or after February 6, 2006, the penalty period begins with the later of:

- (i) The first day of the month in which the individual is eligible for Medicaid and would be receiving Medicaid nursing facility services but for the application of this penalty; or
- (ii) The month during or after which assets have been transferred for less than fair market value.

COMAR 10.09.24.08-1B(3).

COMAR 10.09.24.08-1B(9)(f) states that an applicant for LTC MA may not be found ineligible for LTC MA if the applicant provides convincing evidence that “the asset was transferred exclusively for a purpose other than to qualify for Medical Assistance.” The Local Department approved the Appellant’s application for MA-LTC subject to a 16 day penalty of ineligibility for having transferred \$5,000.00 to Mr. [REDACTED] on March 4, 2017.

The Maryland Medical Assistance Manual (MMAM),⁴ sections 800.17 through 800.23, sets forth the MDH policies regarding transfers for less than fair market value. In April 2013, the MDH issued Manual Release (MR) 159, which updated those policies. Section 800.17(b) and (c) of MR-159 provide that a disposal of assets for less than fair market value includes a disposal made by a guardian. Section 800.17(b) of MR-159 states further that purchasing something for someone else’s use that reduces an applicant’s “countable resources to the

⁴ The MA Manual is a settled, pre-existing policy officially promulgated by the MDH and, consequently, I am bound by it “to the same extent as the agency is or would have been bound if it were hearing the case.” Md. Code Ann., State Gov’t § 10-214(b) (2014). The MA Manual is available online at <<http://mmcp.dhmh.maryland.gov/SitePages/Medical%20Assistance%20Eligibility%20Updates.aspx>>.

applicable resource limit," is a disposal for less than fair market value. Section 800.20 of MR-159 sets forth that a penalty is not imposed:

3. If convincing evidence is provided to the [Case Manager], consisting of testimony or other corroborative evidence that the assets were transferred exclusively for a purpose other than to qualify for Medicaid. (See the section below about "Presumption of Reason for Disposal.") The [Applicant/Recipient] must establish that the asset was transferred for a purpose other than to qualify for Medicaid. Written evidence must be presented to substantiate the specific purpose for which the asset was transferred such as bills, written agreements, oral agreements restated or ratified in written form at a later date, or affidavits. Sometimes, an individual may argue that the asset was not transferred to obtain Medicaid because the individual was already eligible for Medicaid. While that may be true, the asset in question (e.g., a home) might have been counted as a resource or had a lien placed on it in the future. Also, the asset could have been sold to pay for the individual's cost of care. In such a situation, the argument that the individual was already Medicaid eligible is not accepted. (Emphasis in Original).

Section 800.23 of MR-159 sets forth that there is a presumption that a disposal for less than fair market value during the lookback period is for the purpose of establishing eligibility for MA. However, the applicant or recipient has the right to rebut that presumption by furnishing evidence that the transfer was for another purpose. That evidence must address the health status of the applicant or recipient at the time of the transfer, the relationship of the applicant or recipient to the person receiving the transfer, the purpose for disposal of the asset, the reasons for accepting less than fair market value, and the applicant or recipient's plan for meeting her medical and other needs after the disposal. Further, if the transfer related to the serious financial hardship of a family member, an eviction notice, shut-off notice, foreclosure notice, repossession notice for business or farming equipment, or bankruptcy filing, shall constitute evidence that the transfer was for some other purpose. MR-159, Section 800.23.

Mr. [REDACTED] testified that his daughter lived with the father in the father's grandmother's house. The father had problems with substance abuse. Mr. [REDACTED] explained that initially, his daughter's vehicle had been repossessed. When the father's grandmother died, the father was

driving a vehicle with no insurance, which he eventually totaled in an accident. He was unemployed and they could not afford a vehicle. Therefore, Mr. [REDACTED]'s daughter and her two young children were without transportation. Mr. [REDACTED] said that he went to the Appellant for help, and she agreed to give him \$5,000.00 to help his daughter buy a car. According to Mr. [REDACTED] at that time, the father's grandmother was \$35,000.00 behind on her mortgage. She then passed away and [REDACTED] Bank filed foreclosure proceedings in March 2017. Mr. [REDACTED] presented a [REDACTED] Home Mortgage Statement dated December 18, 2017 which indicated that the payments on the mortgage were overdue since July 1, 2016, and the total reinstatement amount as of December 18, 2017 was \$36,805.71. App. Ex. #6. He also presented a Final Loss Mitigation Affidavit, which established [REDACTED] Bank filed a foreclosure action on the grandmother's property, located at [REDACTED] Street, [REDACTED] Maryland on March 17, 2017. App. Ex. #8. Additionally, he presented a [REDACTED] bill dated January 29, 2018 which showed a severely overdue balance for the grandmother's house. App. Ex. #9. Mr. [REDACTED] testified that he paid the [REDACTED] bill for his daughter. Given that the payment of the [REDACTED] bill occurred long after the transaction involving the Appellant's \$5,000.00, I did not find it to be relevant to the merits of this case. However, I accepted it as evidence of Mr. [REDACTED]'s daughter's continuing financial hardship.

Mr. [REDACTED] submitted a copy of the check, dated March 4, 2017, drawn from his checking account after he had transferred the \$5,000.00 from the Appellant's account, in the amount of \$5,200.00 to "[REDACTED]" with the notation that it was for a 2005 Nissan. App. Ex. #3. He also produced a Maryland Certificate of Title, issued on April 19, 2017 in the name of his daughter, with the same address of [REDACTED] Street, [REDACTED] Maryland. App. Ex. #4.

On August 18, 2015, the Circuit Court for [REDACTED] County executed the Order, which declared that the Appellant lacked "sufficient understanding or capacity to make or communicate

responsible decisions concerning her person,” and was “unable to manage her property and affairs because of a disability diagnosed as Dementia.” App. Ex. #11. Therefore, at the time that Mr. ██████ transferred the \$5,000.00 into his account in March 2017, the Appellant had already been deemed mentally incapacitated and incapable of handling her own affairs. Therefore, although Mr. ██████ testified that he spoke to the Appellant about needing \$5,000.00 to purchase a vehicle for his daughter, it is unclear whether the Appellant even knew of the transfer given her mental incapacity. Regardless, even though the \$5,000.00 did not go toward the delinquent mortgage or other outstanding utility bills, the evidence established that Mr. ██████ did use the \$5,000.00 to purchase the 2005 Nissan for his daughter who, at the time, was living in a difficult financial and domestic situation and was unable to purchase a vehicle. She was without transportation for herself and her two young children. The \$5,000.00 check cleared the Appellant’s account on March 3, 2017, and on March 4, 2017, Mr. ██████ wrote a check for \$5,200.00 to ██████ for a 2005 Nissan. App. Exs. #3, 4, and 5.

As of March 20, 2017, after clearance of the \$5,000.00 check from the Appellant’s account, the Appellant’s checking account balance was \$58,754.48. App. Ex. #5. Thus, her resources were not yet close to the \$2,500.00 resource limit for LTC MA. Certainly, the \$5,000.00 accelerated the depletion of her resources. However, after reviewing all of the evidence, I conclude that Mr. ██████’s credible testimony and documentary evidence established that Mr. ██████ transferred the \$5,000.00 to help his daughter, the Appellant’s granddaughter, purchase a vehicle while she was experiencing financial and domestic difficulties. The Appellant’s resources were not yet close to falling below the resource limit for LTC MA eligibility, which further convinced me that Mr. ██████ did not transfer the \$5,000.00 for the purpose of establishing eligibility for LTC MA. Therefore, I conclude that the Appellant

successfully rebutted the presumption that the Appellant transferred the \$5,000.00 for less than fair market value for the purpose of establishing eligibility for LTC MA.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Local Department improperly imposed a penalty period of 16 days as a result of Mr. [REDACTED]'s transfer of the Appellant's funds for less than fair market value for the purchase of a vehicle for the Mr. [REDACTED]'s daughter. COMAR 10.09.24.08-1B (1), (2) and (9)(f). The Appellant did not transfer those funds for the purpose of establishing eligibility for LTC MA.

ORDER

I **ORDER** that the decision of the Local Department to impose a 16 day penalty period for disposal of assets at less than fair market value is **REVERSED**.

June 5, 2018
Date Decision Mailed

SAS/cj
#173979

Signature Appears on
Original [REDACTED]

Susan A. Simrod
Administrative Law Judge

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2017). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

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