

LK Alert

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FAIR HEARING REVERSES ASSET TRANSFER PENALTY WHERE TRANSFERS MADE FOR PURPOSE OTHER THAN TO QUALIFY FOR MEDICAID

In a recent fair hearing decision, Matter of A.S. (FH# 5515265P), the State reversed a decision of the Herkimer County Department of Social Services (“DSS”) to impose a 30.28 month penalty period where evidence showed that the assets (totaling just over \$210,000) were transferred for a purpose other than to qualify for Medicaid. This fair hearing is consistent with Social Services Law Section 365 (d) and (e), which provide that an individual will not be ineligible for Medicaid as a result of a transfer of assets if a satisfactory showing is made that the asset was transferred exclusively for a purpose other than to qualify for Medicaid. The burden of proof lies with the applicant to show that the assets were not transferred with the intention of impoverishing oneself in order to qualify for Medicaid.

The fair hearing decision went on to identify certain factors that could be relevant in demonstrating that the assets were, in fact, transferred for some purpose other than qualifying for Medicaid. These factors include: the physical/mental health of the applicant at the time of the asset transfer; the applicant’s ability to care for himself/herself and/or expectation of nursing home care; pattern of gift giving by the applicant; financial windfall on the part of the applicant; financial need on the part of the gift recipient; financial ability of the applicant to make such gifts while maintaining financial solvency during such period; and the timing of such transfers in relation to the applicant’s institutionalization.

In the case at hand, the applicant was in relatively good health at the time of the asset transfers; while she had some minor memory loss at the time, she was completely able to take care of herself, and she had no expectation of a nursing home need. She had a long-established pattern of gift giving, and she had recently come into some money from an inheritance and the sale of some property. She didn’t need the money; and even after making the gifts to family, she was still able to pay her bills and living expenses. The family members who received the gifts had a financial need (e.g., college expenses and purchase of home). The applicant wasn’t admitted to the nursing home until approximately two to three years after the gifts were made.

This fair hearing decision illustrates the importance of gathering as much information as possible regarding any uncompensated asset transfers made during the Medicaid look-back period. If the facts are right, the applicant very well may be able to qualify for Medicaid institutional benefits, despite the prior asset transfers. However, since these cases are very fact sensitive and often require a fair hearing, it’s a good idea for the applicant to work with a qualified elder law attorney as early as possible in the process.

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