

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	
F T)	OAH No. 13-1802-MDE
_____)	Division No.

DECISION

I. Introduction

F T applied for Medicaid Home and Community-based Waiver benefits. The Department of Health and Social Services, Division of Public Assistance (Division) denied her application and imposed a transfer of assets penalty that made her ineligible for either Medicaid long-term care or Medicaid Home and Community-based Waiver benefits through December 13, 2013. Ms. T requested a hearing.

Ms. T’s hearing was held on January 17, 2014. Ms. T did not participate in the hearing. Her interests were represented by N T, her son and power of attorney, who testified on her behalf. Public Assistance Analyst Terri Gagne represented the Division.

The evidence showed that Ms. T’s assets were transferred to compensate her family members for care services that they provided. As a result, those payments do not result in a transfer of asset penalty. The imposition of a transfer of assets penalty is therefore reversed.

II. Facts

Ms. T is an elderly woman who suffered a fall that incapacitated her in late January of 2013. Her adult children began providing her with 24 hour a day care beginning on January 28, 2013. They retained professional caregivers for Ms. T for the daytime hours (8 a.m. through 4 p.m.) beginning on February 26, 2013. The children continued to provide Ms. T with care during the hours of 4 p.m. through 8 a.m.¹

Ms. T told her children that they should be paid for assisting her. She, however, was not fully lucid due to being on heavy pain medications until the beginning of April 2013. On April 3, 2013, after Ms. T was no longer on heavy pain medications, she and her children sat down and verbally agreed that they should each be paid \$20 per hour for their care of her, which included both previously provided care and future care. They arrived at the hourly amount by taking the

¹ See Exs. 7.12 – 7.14, 7.78 – 7.80, 7.102 – 7.103, 7.106 – 7.108.

hourly rate charged for personal care attendant services, \$23, and provided themselves with a slightly lower rate.²

Ms. T's children kept track of the hours they spent caring for her. Those hours are documented by calendars and a care log.³ The three children received a total of \$67,910 for the care they provided Ms. T during the time period from January 28 through September 30, 2014.⁴ In addition, there is an outstanding balance due of \$12,060 for the care they provided during that time period for which they have not been compensated.⁵

Ms. T applied for Medicaid Home and Community-based Waiver benefits on September 3, 2013.⁶ On October 18, 2013, while that application was pending, she signed an agreement where she agreed to compensate her children for their care of her, both provided in the past and to be provided in the future.⁷

Ms. T provided the Division with a copy of her care agreement, and her financial information, which included copies of bank statements and checks written to her children. After receipt of that information, the Division denied her application because it determined that her payments to her children caused her to be subject to a transfer of asset penalty, which made her not eligible for either Medicaid long-term care or Home and Community-based Waiver benefits until December 13, 2013.⁸

III. Discussion

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has differing eligibility requirements. There are special financial rules applicable to applicants for either Medicaid long-term care or Medicaid Home and Community-based Waiver benefits. Those financial rules proscribe the transfer of assets made to cause a person to be financially eligible for Medicaid benefits, and impose a period of ineligibility depending upon the value of the transferred asset and when the transfer occurred.⁹

The Division determined that Ms. T's financial transfers to her children violated the rules proscribing asset transfers, and found her not eligible for either Medicaid long-term care or

² *Id.*

³ Exs. 7.16 – 7.68.

⁴ *See* Exs. 7.69, 7.81 – 7.96.

⁵ Ex. 7.69

⁶ Exs. 2.0 – 2.7.

⁷ Exs. 7.98 – 7.100.

⁸ Exs. 7.0, 9.0.

⁹ *See* 7 AAC 100.510.

Medicaid Home and Community-based Waiver benefits until December 13, 2013. However, transfers made for value are not subject to the transfer of asset penalty: “[t]he following asset transfers do not result in a transfer-of-asset penalty: (1) a compensated transfer in which the transferor has received a tangible object, service, or benefit that has a value equal to or greater than the value of the equity of the transferred asset.”¹⁰

The facts of this case show that the transfers to Ms. T’s children were made for value, specifically to compensate them for the time they spent caring for their ill mother. The hourly rate for the services was \$20 per hour, which is not excessive, given the fact that the hourly rate for PCA services was \$23 per hour. On its face, Ms. T was not subject to a transfer of asset penalty.

The Division argued that under the applicable regulations, that in order for the transfer for value to be effective there must be a document predating or contemporaneous with the start of the transfers.¹¹ There is substantial documentation to support the payment in this case, being the care calendars and care logs, as well as the verification of all parties involved that there was an agreement to compensate Ms. T’s caregivers. To the extent that the Division is arguing there has to be a separate agreement predating or contemporaneous with the transfers, this is a misconstruction of 7 AAC 100.510(m), which requires that there be documentation verifying that the transfer is made under 7 AAC 100.510(k) **and** (l) “for the sole benefit of an individual’s spouse or child or for the sole benefit of an applicant or recipient.” These fall within exceptions made for transfers to or from a spouse, to a blind or disabled child, or to a trust for a blind or disabled child, or to a special needs trust for a blind or disabled applicant/recipient.¹² The preexisting documentation argument raised by the Division is not germane because this case involves a transfer for value.

Ms. T has the burden of proof in this case. She satisfied her burden of proof and demonstrated that the transfer of her funds to her three children was to compensate them for her care services. Accordingly, she falls within the exception to the transfer of asset penalty contained in 7 AAC 100.510(k)(1).

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¹⁰ 7 AAC 100.510(k).

¹¹ See Ex. 7.0.

¹² 7 AAC 100.510(k)(9), (l), and (m).

IV. Conclusion

The Division's decision that Ms. T was subject to a transfer of asset penalty, which made her ineligible for Medicaid long-term care or Medicaid Home and Community-based Waiver benefits until December 13, 2013, is reversed.

DATED this 27th day of February, 2014.

Signed _____

Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of March, 2014.

By: *Signed* _____

Name: Ree Sailors
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]