

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

In the Matter of)
)
M C) OAH No. 21-0787-MDE
) Agency No.
_____)

DECISION

I. Introduction

M C applied for Medicaid Home and Community-Based Waiver program. After applying and providing supporting documents to the Division of Public Assistance, she was informed that she was being assessed a 10.99-month transfer of asset penalty, which made her financially ineligible for the Waiver program until after December 31, 2021. She challenged the penalty and requested a hearing. Based on the testimony and evidence presented at the hearing, the Division’s decision is affirmed.

II. Facts

The facts in this case are undisputed. Ms. C is an 81-year-old first-time applicant for Medicaid Waiver services. She applied to the Division for Waiver services through her daughter, co-guardian, and conservator, F J, on December 5, 2020.¹

As Ms. J testified, part of the challenge faced by Ms. C and her family in seeking Medicaid Waiver was their lack of understanding regarding how the process worked or what was required. As such, they spent a frustrating amount of time compiling and submitting documents to the Division, often with a lack of certainty as to what was needed or how it might impact the ultimate outcome.² They did, however, retain an attorney who assisted them in liquidating Ms. C’s assets, creating a guardianship and conservatorship for her, creating two separate trusts, and assisting with other details the family sought to address as part of the application process.³

Ultimately, Ms. C’s home was sold in January 2020 after she had moved to the Business A Home in City A, Alaska.⁴ Based on this asset alone, Ms. C received \$361,164.34.⁵

In the record in this case, there are two separate trusts referenced. The first trust is titled the “M C Qualifying Income Trust,” dated July 25, 2020.⁶ It named Ms. C as the settlor and

¹ Exs. 3 – 3.7, 5 – 5.4.
² F J Testimony.
³ F J Testimony; Exs. 4 – 4.70, 7 – 7.14.
⁴ Exs. 2.1, 3.
⁵ Exs. 6 - 6.19.
⁶ Exs. 7 - 7.14.

beneficiary and was created by attorney D B.⁷ The second trust was titled the “Misty Trust, dated February 11, 2020.”⁸ It named Ms. C as the grantor and was also prepared by attorney B.⁹ Ultimately, the funds from the sale of Ms. C’s home appear to have been deposited into a bank account held by the Misty Trust.¹⁰

Initially, there was some confusion within the Division regarding whether either of the trusts created was a Medicaid qualifying income trust.¹¹ While the Division initially said that there was not a Medicaid qualifying income trust involved, it later changed its position on that point.¹² Instead, it concluded that the problem was not the nature of the trust documentation itself, the problem was the value of the assets transferred to the trust without consideration.¹³

After deduction of allowed expenses of \$92,162.50,¹⁴ the Division determined that \$269,001.84 was transferred into the Misty trust without consideration. On that basis the Division calculated and applied a Transfer of Asset penalty.¹⁵ The penalty was for 10.99 months and extended from Ms. C’s level of care approval on February 1, 2021, through December 31, 2021.¹⁶

The Division’s decision was challenged by Ms. J. As asserted in the hearing request, she did not believe a penalty should apply because the family worked with an attorney and was advised that a penalty would not apply.¹⁷

Just before the hearing, Ms. J provided approximately 16 pages of invoices from Dalrymple Law, P.C., referencing attorney’s fees for legal services. The invoices had subject lines indicating that they were for services such as access easement issue, a complaint for unlawful lien and slander of title, and civil litigation regarding case no. 3XX-19-00000 CI.¹⁸

⁷ Exs. 7.2, 7.12.

⁸ Exs. 4 – 4.70.

⁹ Exs. 4, 4.5.

¹⁰ Exs. 14 - 14.10.

¹¹ Exs. 15 – 15.2.

¹² Exs. 15 – 15.2.

¹³ Exs. 2.15, 2.19; Sally Dial Testimony.

¹⁴ In arriving at this figure, the Division excluded as allowable expenses an annuity valued at \$64,853.33, Business A Home payments totaling \$14,534.17, legal fees to Ms. B totaling \$7,775, and a Forethought Trust amount of \$5,000. These allowable expenses totaled \$92,162.50. Exs. 2.15, 2.19.

¹⁵ Exs. 2.15, 2.19; Sally Dial Testimony.

¹⁶ Ex. 18; Sally Dial Testimony; Position Statement (May 7, 2021); Notice of Denial of Eligibility (April 4, 2021), attached as p. 2 to OAH Case Referral Notice (May 3, 2021).

¹⁷ Ex. 16.

¹⁸ Documents from C (June 28, 2021).

At the hearing, Ms. J asked the Division representative whether these fees could be considered as an allowed expense and potentially deducted from the transfer of asset penalty. The Division representative confirmed that it might consider doing so. However, Ms. J was told that before this could occur, she would need to: 1) confirm that the legal fees were for services provided to Ms. C, or for the benefit of real property she owned; 2) identify what parcel of property was involved; and 3) specify the total amount of the Dalrymple Law, P.C. legal expenses the Division was being asked to consider as an allowed expense.¹⁹ No additional information was ever provided to the Office of Administrative Hearings or the Division.²⁰ As a consequence, the Division did not recalculate the penalty and the record in the case was closed.²¹

III. Discussion

As Ms. J testified, she does not take issue regarding the underlying facts of this case. Further, now that she and the C family have a better understanding of how the Medicaid Waiver process works, they also possess a greater appreciation of why the penalty was assessed. As she also stated, the family has now confirmed the likely propriety of the Division applying the transfer of asset penalty on these facts.²² The following discussion may provide some further clarity.

The Medicaid program contains numerous financial requirements. The relevant one for purposes of this case is applicable to applicants who are eligible for Medicaid in the long-term care eligibility category.²³ It examines transfers or sales of the applicant's assets within five years of the date of the application.²⁴ If there was a transfer/sale of an asset for less than the fair market value of the asset, then the Medicaid program imposes a transfer of asset penalty, that delays the date of when an applicant will become financially eligible for Medicaid benefits. That penalty is calculated by first determining the amount of the uncompensated transfer/sale and dividing it by the "average monthly cost to a private patient of nursing home care in the individual's community on the date of application."²⁵ As an applicant, Ms. C has the burden of

¹⁹ Order Regarding Close of the Record (June 29, 2021).

²⁰ Supplemental Information C (July 13, 2021).

²¹ Order Regarding Close of the Record; Supplemental Information C.

²² F J Testimony.

²³ 7 AAC 100.510(a)(1).

²⁴ The timeline varies slightly depending upon the circumstances of the applicant. 7 AAC 100.510(c). In this case, it would be the date of the application, because Ms. C was already residing in the Business A Home at the time of her application.

²⁵ 7 AAC 100.510(e).

proof, by a preponderance of the evidence, to demonstrate her eligibility for Medicaid coverage.²⁶

In this instance, the preponderance of evidence establishes that from the sale of her home, Ms. C received \$361,164.34.²⁷ But, certain allowed expenses and excluded assets do not result in a transfer of asset penalty.²⁸ For instance, such items include the transfer of an asset made exclusively for a purpose other than to qualify for Medicaid.²⁹ Accordingly, the Division deducted from the home sale proceeds allowable expenses totaling \$92,162.50. These allowed expenses included \$7,775 in legal fees paid to Ms. B for the work she performed in creating the trusts.³⁰ This resulted in total countable transfer of assets of \$269,001.84. When that number is divided by \$24,481.13, the average monthly cost of the nursing home where Ms. C is residing, it results in a transfer of asset penalty of 10.99 months from her level of care approval on February 1, 2021, through December 31, 2021.³¹

None of this evidence was challenged or refuted by Ms. J. Instead, the only issue raised was regarding the potential of deducting legal fees with Dalrymple Law, P.C., as allowed expenses.³² However, because no further information or documentation was provided to the Division to substantiate that those fees were associated with services for Ms. C or her property as was requested, it had no ability to consider doing so. Accordingly, the weight of the evidence supports the conclusion that \$269,001.84 was transferred into trust by Ms. C without consideration.³³ As a result, a 10.99- month transfer of asset penalty was properly calculated and applied in this case.

IV. Conclusion

The Division's decision applying a transfer of asset penalty of 10.99 months and deeming Ms. C ineligible for Medicaid Waiver until December 31, 2021, is AFFIRMED.

DATED this 22nd day of July 2021.

By: Signed
Z. Kent Sullivan
Administrative Law Judge

²⁶ 7 AAC 49.135.

²⁷ Exs. 6 - 6.19.

²⁸ 7 AAC 100.510(k); 7 AAC 100.400.

²⁹ 7 AAC 100.510(k)(4).

³⁰ Exs. 2.15, 2.19.

³¹ Ex. 18; Sally Dial Testimony; Position Statement (May 7, 2021); Notice of Denial of Eligibility (April 4, 2021), attached as p. 2 to OAH Case Referral Notice (May 3, 2021).

³² F J Testimony.

³³ Exs. 2.15, 2.19, 14 - 14.10; Sally Dial Testimony.

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 5th day of August, 2021.

By: Signed _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]