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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1271-22

W.F.,

Petitioner-Appellant,

v.

MORRIS COUNTY DEPARTMENT OF FAMILY SERVICES,

Respondent-Respondent.

Submitted April 22, 2024 – Decided May 30, 2024

Before Judges Sabatino and Marczyk.

On appeal from the New Jersey Department of Human Services, Division of Medical Assistance and Health Services.

Dubeck & Miller, attorneys for appellant (Adam P. Dubeck and Mark D. Miller, on the brief).

Johnson & Johnson, attorneys for respondent Morris County Department of Family Services (William G. Johnson, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent Division of Medical Assistance and Health

Services (Melissa H. Raksa, Assistant Attorney General, of counsel; Laura N. Morson, Deputy Attorney General, on the brief).

PER CURIAM

This appeal involves the computation of an incapacitated person's available assets for purposes of Medicaid eligibility.

A.P.D.,[1] the guardian of W.F., appeals a November 29, 2022, final agency decision of the Division of Medical Assistance and Health Services ("the Division" or "DMAHS") reducing W.F.'s Medicaid benefits by over $60,000 because of trusts the Division deemed to be his available assets. For the reasons that follow, we reverse and remand.

I.

W.F., who is now in his late fifties, has been living for many years in a Care One nursing home and is incapacitated by a long-term alcoholism-related disease. A.P.D. was appointed guardian of his property in October 2019.

About a decade before he became incapacitated, W.F. entered into a property settlement agreement ("PSA") as part of the divorce judgment with his ex-wife. Under the PSA, W.F. agreed to pay $23,400 annually in child support

[1] We use initials to protect the privacy interests of W.F. and his guardian.

to his ex-wife for their two minor children, plus one-half of their future college and other specified expenses.

After W.F. became ill, his assets were insufficient to pay both his debts to Care One and his child support and college expense obligations. To address the children's support needs, A.P.D. created a trust (the "Family Trust"). The Probate Part of the Chancery Division approved the trust. Notably, the trust is irrevocable, and the funds must be used only for the needs of the children and not W.F.'s personal needs.

As W.F.'s guardian, A.P.D. petitioned the Morris County Department of Family Services ("MCDFS") for Medicaid benefits. MCDFS informally notified A.P.D. that the trust would be considered a gift to W.F.'s children, prompting A.P.D. to seek reformation of the trust in the Chancery Division. At the suggestion of the Guardian ad Litem ("GAL") for the children, the Chancery judge approved division of W.F.'s assets through trusts into three equal shares: one-third for counsel fees and Care One, one-third for W.F.'s minor son, and one-third for W.F.'s minor daughter. The Chancery judge ordered the funds for the children into new trusts for their benefit.

A.P.D. then renewed his application to MCDFS concerning W.F.'s Medicaid eligibility. MCDFS maintained its position that the funds were

"available" to W.F. and approved the application with a "transfer penalty" proportionately reducing his benefits.

W.F. then requested what is known under N.J.A.C. 10:49-9.13 as a "fair hearing" before the Office of Administrative Law to challenge MCDFS's partial rejection of his petition. After two days of hearings, an administrative law judge ("ALJ") found: (1) MCDFS waived its right to object to the propriety of the transfer; and (2) nevertheless, the transfer was proper. However, the Division's Assistant Commissioner disagreed with the ALJ's findings and issued the final agency decision reinstating the transfer penalty.

On appeal, W.F. principally argues[2] that the Division misinterpreted N.J.A.C. 10:71-4.10(e)(1) to conclude that the reformation of the Family Trust to partially satisfy W.F.'s outstanding child support obligations had been improperly executed at his behest to expedite his Medicaid eligibility. W.F. contends the child support payments legitimately satisfied debts that are certain and collectable under the divorce judgment entered in the Family Part of the Chancery Division. He submits they are not liabilities of a speculative amount

[2] W.F. does not contest the Assistant Commissioner's rejection of the ALJ's waiver finding.

he assumed by entering a post-incapacitation improper contract designed to promote Medicaid eligibility.

II.

The subject matter before us concerns the rules and regulations of the Medicaid program. "Medicaid was enacted in 1965 as Title XIX of the Social Security Act, and is a joint federal and state program to provide a safety net for payment of medical bills for low-income individuals who are elderly, blind or disabled." W.T. v. Div. of Med. Assistance & Health Servs., 391 N.J. Super. 25, 36 (App. Div. 2007). "Medicaid is the only government program for payment of long-term nursing home care." Ibid. Among other requirements for states to participate, "[e]ach participating state must adopt a plan that 'includes "reasonable standards . . . for determining eligibility for and the extent of medical assistance . . . [that is] consistent with the objectives" of the Medicaid program.'" Mistrick v. Div. of Med. Assistance & Health Servs., 154 N.J. 158, 166 (1998) (alterations in original).

"New Jersey has elected to participate in the Medicaid program by enacting the New Jersey Medical Assistance and Health Services Act. N.J.S.A. 30:4D-1 to -19.1. [DMAHS] has the responsibility for administering the program." Ibid. (citing N.J.S.A. 30:4D-3(c)).

Medicaid eligibility is limited in this state to individuals whose "resources" total no more than $2,000. N.J.A.C. 10:71-4.5(c). "Resources" are defined to include "any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his or her support and maintenance." N.J.A.C. 10:71-4.1(b).

Only "available" resources are counted in determining eligibility. N.J.A.C. 10:71-4.1(c). A resource is considered "available" to an applicant if "[t]he person has the right, authority or power to liquidate real or personal property or his or her share of it." N.J.A.C. 10:71-4.1(c)(1). Resources "which are not accessible to an individual through no fault of his or her own" are excluded from the eligibility determination. N.J.A.C. 10:71-4.4(b)(6). "Resource eligibility is determined as of the first moment of the first day of each month." N.J.A.C. 10:71-4.1(e).

Even if an individual is otherwise eligible for Medicaid, New Jersey regulations impose a transfer penalty of ineligibility if the applicant (or his or her spouse) has disposed of assets at less than fair market value at any time during or after the sixty-month "look-back" period. N.J.A.C. 10:71-4.10(a).

"Any applicant or beneficiary 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. . . . [T]he burden of proof shall rest with the applicant." N.J.A.C. 10:71-4.10(j) (emphasis added). Further, the Medicaid "[a]gency determination pursuant to client rebuttal shall be as follows:

> 1. The presumption that assets were transferred to establish Medicaid eligibility shall be considered successfully rebutted only if the applicant demonstrates that the asset was transferred exclusively for some other purpose.
>
> 2. 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.
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> 3. The agency's determination shall not include an evaluation of the merits of the applicant's stated purpose of transferring assets. The determination shall only deal with whether or not the applicant has proven that the transfer was solely for some purpose other than establishing Medicaid eligibility.
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> 4. The final determination regarding the purpose of the transfer shall be made at a supervisory level at the county welfare agency and shall be documented in the case record.
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> 5. The applicant shall be sent a notice of the decision, which shall include information on his or her right to a fair hearing in accordance with N.J.A.C. 10:49–10.
>
> [N.J.A.C. 10:71-4.10(l).]

When an applicant fails to rebut the presumption that a transfer was motivated by Medicaid eligibility, the transfer penalty will not be applied if one of the six enumerated exceptions applies. N.J.A.C. 10:71-4.10(e)(1) to (6). W.F. does not rely on any of those exceptions here.

If the transfer penalty is ultimately imposed, applicants may contest that determination through a fair hearing before an ALJ. N.J.A.C. 10:49-10.3(b), N.J.A.C. 10:49-10.6. After the hearing, the ALJ will issue an "initial decision" that may be adopted or rejected by the "DMAHS' head" as the "final decision" that "shall be binding on . . . DMAHS." N.J.A.C. 10:49-10.12.

III.

In reviewing the Division's final agency decision in this case, we recognize that we owe considerable deference to its expertise in the program it administers. Decisions by DMAHS limiting Medicaid eligibility are subject to a "limited scope of review [as] the final determination of a State administrative agency." W.T., 391 N.J. Super. at 35. "An administrative agency's decision will be upheld 'unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 261 (App. Div. 2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)).

That said, we review the agency's determinations on questions of law de novo. "[W]e are 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" C.L. v. Div. of Med. Assistance & Health Servs., 473 N.J. Super. 591, 598 (App. Div. 2022) (quoting R.S., 434 N.J. Super. at 261). "[W]hen an agency's decision is plainly mistaken, in the interest of justice we will decline deference to its decision." W.T., 391 N.J. Super. at 36.

Guided by these principles, we conclude the Assistant Commissioner's decision reversing the ALJ's ruling in favor of W.F. misapplied the legal standards of eligibility to the circumstances of this case, and, moreover, was arbitrary and capricious.

It was unreasonable for the Division and its county affiliate, MCDFS, to classify the court-ordered transfer as a "gift," when W.F. had no true control over the funds in question. W.F.'s child support and college obligations were already court-ordered when the transfer was proposed. At the time of the transfer, W.F. was incapable of earning future income and possessed fewer funds than could satisfy the child support obligations. The minor children were entitled to payment under DeCeglia v. Estate of Colletti, 265 N.J. Super. 128, 140 (App. Div. 1993).

The Chancery Division's finding of such an entitlement by the children in this case is evidenced by its express recognition that W.F.'s guardian A.P.D. "was not in a position to formally consent on behalf of [W.F.]." Moreover, the only parties from which the Chancery Division sought and obtained consent for the transfer were the holders of the two obligations with claims to the entirety of W.F.'s assets, i.e., his children and Care One, the latter as the medical institution providing him with services and housing.

The Division is incorrect that the reformation of the Family Trust ordered by the Chancery judge was a "gift" by W.F. warranting imposition of a transfer penalty. Notably, N.J.A.C. 10:71-4.10(c) imposes a transfer penalty if "an individual" has gifted assets during the look-back period. That same regulation defines "individual" to include the applicant for benefits, their spouse or guardian, and "[a]ny person including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse." N.J.A.C. 10:71-4.10(b)(1)(iv) (emphasis added).

Here, the Chancery judge did not enter an order granting W.F. the relief requested by his guardian, i.e., to reform the Family Trust "into a self-settled special needs trust for [W.F.'s] sole benefit with a 'pay back' provision to Medicaid." Rather, the Chancery judge adopted a proposal by the GAL for the

minor children to order the division of the assets of the Family Trust into thirds: one-third to satisfy legal fees and other debts (for which the agency has not imposed a transfer penalty), and two-thirds into trusts to pay child support obligations for the children (for which the agency imposed a transfer penalty). The transfer was not ordered at the behest of W.F.—the "individual" under N.J.A.C. 10:71-4.10(b)(1) who must have made the purported gift.

The record therefore shows that the allocation of the trust assets into separate trusts for the children was requested by the GAL, not W.F. W.F.'s guardian had asked for the entirety of the Family Trust assets to be transferred to a new "self-settled personal needs trust." Accordingly, it was unreasonable for the Division and MCDFS to penalize W.F. for "gifting" assets that, in reality, were transferred by a court order contrary to his guardian's own request.

The inapplicability of a transfer penalty to the trust reformation in this context also aligns with N.J.A.C. 10:71-4.10(k), which specifies a "[c]ourt-ordered transfer (when the court is not acting on behalf of, or at the direction of, the individual or the individual's spouse)" is a "factor[], while not conclusive, [that] may indicate that the assets were transferred exclusively for some purpose other than establishing Medicaid eligibility."

Simply stated, the Division has misconceived the nature of the Chancery judge's reformation of the Family Trust into trusts to benefit the two children. The payments were not a gift directed by W.F or his personal guardian. As such, as a matter of law, they were not "available" assets in calculating W.F.'s Medicaid eligibility. The final agency decision was legally erroneous. Moreover, the decision was arbitrary, capricious, and unreasonable.

Consequently, we reverse the final agency decision and the associated imposition of the transfer penalty. We remand for a recalculation of the amounts owed, in a manner consistent with our decision. We do not retain jurisdiction.

Reversed and remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office

CLERK OF THE APPELLATE DIVISION