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C O U N S E L L O R S A T L A W

Saying that a transfer/gift wasn't intended for Medicaid won't cut it

April 7, 2011 by [Deirdre Wheatley-Liss](#)



It's not really a surprise, but a recent decision confirmed that trying to prove to New Jersey that a transfer was made within the Medicaid 5 year look back period for reasons "other than qualifying for Medicaid" is an uphill battle with a low probability of success.

Fellow New Jersey elder law attorney John Callinan represented A.M., who transferred \$22,103 in September 2006. A.M. had a sudden onset illness, and applied for Medicaid August 2009. She was found eligible for Medicaid, but a transfer penalty was imposed due to the gift.

[Elderlawanswers.com](#) provides details on A.M.'s appeal:

A.M. appealed, claiming that she transferred the money exclusively for reasons other than to qualify for Medicaid. She explained that she gave money equally to all of her children over the years, but she had set aside money for her son because he was addicted to cocaine and going through a divorce, and she transferred the money to him only after he had been rehabilitated. A hearing officer reversed the county's decision, determining A.M. had met her burden of proof. However, the director of the Division of Medical Assistance and Health Services reversed the hearing officer, holding that A.M. had not produced evidence to show why she suddenly transferred more than half her assets to her son. A.M. appealed to court (she died while the appeal was pending).

The New Jersey Superior Court, Appellate Division affirms, holding that A.M. did not establish that the transfer was done exclusively for reasons other than to qualify for Medicaid. The court notes that A.M. "failed to present any evidence as to how [A.M.] was allegedly able to live independently during the period between her substantial gift to her son and her admission to the nursing home."

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