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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3856-19**

J.F.,

Petitioner-Appellant,

v.

**DIVISION OF MEDICAL
ASSISTANCE AND HEALTH
SERVICES, and MORRIS COUNTY
BOARD OF SOCIAL SERVICES,**

Respondents-Respondents.

Argued May 19, 2022 – Decided June 15, 2022

Before Judges Haas and Alvarez.

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

Christopher DeFalco argued the cause for appellant.

Jacqueline R. D'Alessandro, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Jacqueline R. D'Alessandro, on the brief).

John A. Napolitano, Morris County Counsel, attorney
(William G. Johnson, Special Morris County Counsel,
on the statement in lieu of brief).

PER CURIAM

J.F. appeals from a May 1, 2020 final agency decision of the Division of Medical Assistance and Health Services imposing a 203-day disqualification period and the related "transfer" penalty of \$69,800. The Division imposed the 203-day disqualification period because of J.F.'s alleged transfer of assets for less than fair market value within the five-year look-back period before J.F. entered a skilled nursing facility. See N.J.A.C. 10:71-4.10(a). We reverse.

The administrative law judge (ALJ), who heard the case as a contested matter,¹ found J.F.'s sister, M.Q.L., to be a credible witness. J.F. lived with her during the five-year period, and had agreed to pay her \$1,000 a month for rent. M.Q.L. testified in detail regarding checks he wrote from his account, which in the main were written to cash. She kept \$1,000 of the funds for monthly rent, and he kept the remainder. J.F. came to live with her in 2012 because he could not live independently.

The ALJ ruled on February 5, 2020, that all the funds paid to M.Q.L. were for J.F.'s costs of living, including the oral lease for \$1,000 per month. That

¹ N.J.S.A. 52:14B-1 to -15.

figure was less than the typical rent for the area, and less than J.F. had been paying prior to moving in with his sister. Therefore, no transfer of assets for less than fair market value had occurred during the look-back period, and the ALJ vacated the disqualification.

On May 1, 2020, the Division reversed the ALJ's decision because it drew different conclusions from the ALJ's factual findings. For example, the Division identified M.Q.L.'s failure to provide income tax returns declaring the rental income, or documents reflecting expenses incurred on J.F.'s behalf, as casting doubt on her truthfulness.

Throughout this litigation, the Division has taken the position that J.F. has not met his burden of refuting the rebuttable presumption that assets were transferred for the purpose of establishing Medicaid eligibility. See H.K. v. State, 184 N.J. 367, 380 (2005). To rebut the presumption, the applicant must present "convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose." N.J.A.C. 10:71-4.10(j). The applicant must present credible documentary evidence of the fair market value of the transferred assets. Ibid. The Division does not dispute the amount of payments made by J.F. over the five-year period, nor that the amount, his only living expenses, was

reasonable. The Division nonetheless takes the position that M.Q.L.'s testimony was insufficient to rebut the presumption.

Judicial review of an agency's final decision is limited. Hayes v. Bd. of Trs. of Police & Firemen's Ret. Sys., 421 N.J. Super. 43, 51 (App. Div. 2011). The court's "function is to determine whether the administrative action was arbitrary, capricious or unreasonable." Burris v. Police Dep't W. Orange, 338 N.J. Super. 493, 496 (App. Div. 2001) (citing Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980)); see also Aqua Beach Condo. Ass'n v. Dep't of Cmty. Affairs, 186 N.J. 5, 16 (2006). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443–44 (App. Div. 2006) (citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002); Barone v. Dep't of Human Servs., 210 N.J. Super. 276, 285 (App. Div. 1986)).

"[W]here an agency rejects an ALJ's findings of fact, [the court] need not give the agency the deference [it] ordinarily accord[s] on review of final agency decisions." A.M. v. Monmouth Cty. Bd. of Soc. Servs., 466 N.J. Super. 557, 565 (App. Div. 2021). In fact, N.J.S.A. 52:14B-10(c) forbids agencies from modifying an ALJ's factual findings as to the credibility of lay witnesses, unless

such findings are "arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." If an agency head "reject[s] or modif[ies] any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c).

Agencies are bound by an ALJ's factual findings "just as" appellate courts are bound by the factual findings of trial courts. Cavalieri v. Bd. of Trustees of Pub. Employees Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004). "[G]enerally it is not for [an appellate court] or the agency head to disturb [an ALJ's] credibility determination, made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K., 184 N.J. at 384. "When an ALJ has made factual findings by evaluating the credibility of lay witnesses, the [agency] may no longer sift through the record anew to make its own decision," even if that decision "is independently supported by credible evidence." Cavalieri, 368 N.J. Super. at 534. Where the record, "can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Id. at 537.

The withdrawals at issue amounted to approximately \$15,000 per year for all of J.F.'s living expenses, including rent—a modest sum. Even if M.Q.L.'s testimony was not crystal clear regarding the checks written by her brother, which included payments to her and cash he kept for himself, it was the ALJ's responsibility to resolve the conflict, and he did so.

The agency rejected M.Q.L.'s credibility when only the ALJ had the opportunity to view the witness and her documentation. His findings were not arbitrary and were supported by the record as a whole. We owe no deference to an agency's application of statutes it is charged with interpreting where the construction is plainly unreasonable. Haley v. Bd. of Review, Dep't of Labor, 245 N.J. 511, 519 (2021).

The Division's conclusion that M.Q.L.'s testimony was incompetent is not sustainable. It complied with the residuum rule. N.J.A.C. 11-15.5(b). M.Q.L. testified that her brother wrote checks to cash, sometimes at her urging because months would pass and he would pay her nothing. She had the cancelled checks. Even when she would fill out the checks for him, he would keep some portion and pay her rent with the balance, and the totals payable over the years consistently remained at about \$15,000 annually.

Under N.J.A.C. 10:71-4.10(a), "[a]n individual shall be ineligible for institutional level services . . . if he or she . . . has disposed of assets at less than fair market value at any time during or after the 60-month period immediately before" he or she is institutionalized. N.J.A.C. 10:71-4.10(j) further states "[a]ny applicant . . . may rebut the presumption that assets were transferred to establish Medicaid eligibility by presenting convincing evidence that the assets were transferred exclusively . . . for some other purpose." This subsection does not apply to all transfers of assets. Rather, it applies only to transfers for less than market value because it specifies that applicants who wish to rebut the presumption must explain why they accepted less than market value. N.J.A.C. 10:71-4.10(j).

Lastly, N.J.A.C. 10:71-4.10(b)(6)(ii), the provision cited by the Division, states:

In regard to transfers intended to compensate a friend or relative for care or services provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation. Thus, a transfer of assets to a friend or relative for the alleged purpose of compensating for care or services provided free in the past shall be presumed to have been transferred for no compensation. This presumption **may** be rebutted by the presentation of credible documentary evidence preexisting the delivery of the care or services indicating the type and terms of compensation. Further,

the amount of compensation or the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community. That portion of compensation in excess of the prevailing rate shall be considered to be uncompensated value.


[Emphasis added.]

J.F. withdrew only \$83,325 in total to support himself over a period of roughly five years, a modest amount for an individual's living expenses. J.F.'s proofs met the regulatory standard found in N.J.A.C. 10:71-4.10(b)(6)(ii). Here, M.Q.L. provided shelter, food, some personal care, and transportation for her brother. That the lease the parties entered into was oral did not make it invalid, particularly given the familial relationship between the parties.

We agree with the ALJ that M.Q.L.'s credible statements amply and sufficiently rebutted the statutory presumption. M.Q.L. presented convincing evidence "that the assets were transferred exclusively (that is, solely) for some other purpose" than establishing Medicaid eligibility. N.J.A.C. 10:71-4.10(j). The proofs she provided sufficed. Thus, the 203-day disqualification period is hereby vacated.

Reversed.

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


CLERK OF THE APPELLATE DIVISION