



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

S.V.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 2069-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents in evidence. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is April 8, 2016 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on February 23, 2016.

This matter concerns testamentary trust set up by Petitioner's father. Ocean County determined that the trust language of the trust permitted it to be counted toward Petitioner's resources and denied her application due to excess resources.

Testamentary trusts are neither excluded nor exempt resources for Medicaid eligibility purposes but are "dealt with using applicable cash assistance program policies." State Medicaid Manual (SMM) § 3259.1.A.2 See also Social Security Procedures Operations Manual System (POMS) SI 01120.200. As such, the availability of the trust corpus to pay for Petitioner's care for purposes of determining Medicaid eligibility is subject to the terms of her father's trust and his testamentary intent.

The trust mandates that the income be paid to Petitioner at least quarterly and permits the corpus to be paid for Petitioner's emergencies and illnesses.¹ The record does not show any formal accounting of the payments to Petitioner despite her ability to demand and approve them. The one page disbursement sheet is marked as P-3 shows Petitioner received \$190,599.43 from the trust since June 2010. As the ALJ noted Petitioner failed to show by a preponderance of the evidence that trust was not available to her as there were provisions in the trust that enabled her to receive or to approve distributions from the trust. ID at 4-5.

Petitioner's argument focused on one article of the trust without addressing the other provisions that permit distributions for illness and incapacity and give her authority to approve disbursements. The Initial Decision found that Petitioner's argument that her nursing home care is not an "emergency" falls flat as the record shows that her \$11,000 credit card debt was considered an "emergency." ID at 5. Moreover, the Article Nine permits payments from income or principal during the "minority, illness or other

¹ The Initial Decision states the trust is worth \$651,349.91.

incapacity of any beneficiary." These distributions are subject to the binding approval by Petitioner. See Article Ten.

The Initial Decision noted that the Petitioner's reliance on letters from the trustee "who is not presently subject to the jurisdiction of this tribunal, are not conclusive." ID at 2. Nor was there adequate explanation as to the payments previously made by the trust.

Petitioner's eligibility is determined by taking into account payments made by the trust as well as control she had in directing those payments. The Initial Decision raised questions regarding the provisions of the trust that permitted Petitioner to request or approve disbursements. Petitioner failed to adequately explain how those provisions, which give her oversight over distributions, prevent the corpus from being available to pay for nursing home care and, thus, part of the Medicaid determination.

THEREFORE, it is on this *5th* day of APRIL 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED:



Meghan Davey, Director
Division of Medical Assistance and
Health Services