



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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MEGHAN DAVEY
Director

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

G.V.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 17039-2016

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. No exceptions were filed.¹ Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is April 27, 2017, in accordance with an Order of Extension.

¹ Petitioner sent a letter on February 8, 2017 withdrawing her appeal "pending before the Office of Administrative Law". The matter was no longer pending at OAL and there is no provision to unilaterally withdraw a fair hearing as the Initial Decision had been issued.

Petitioner applied for Medicaid benefits in July 2016. At the time she disclosed a trust that she established in 2011. Petitioner is the grantor and the beneficiary. Her daughter is the trustee. It appears that she placed assets into the trust. The trust also owned real property that was sold in 2015 and the proceeds placed in the trust. Monmouth County determined that the trust was an available resource and denied the application as over the \$2,000 resource limit.

The Initial Decision determined that the assets in Petitioner's trust were available to her for purposes of determining Medicaid eligibility. The notion that one could hide assets in a trust so as to pass them to heirs while having Medicaid pay for care has long been appealing to individuals but an anathema to Congress.

Medicaid benefits are to be "last resource benefits" as they are intended to be for those persons whose resources are inadequate to secure quality medical care at their own expense. N.J.S.A. 30:4D-2. Although Medicaid is a program for the medically needy, individuals gained access to taxpayer-funded healthcare by shielding their assets in trusts while retaining the benefit of their wealth and the ability to pass that wealth to their heirs. Despite Congress' efforts, prior to 1986, many individuals made assets "unavailable" by placing them in irrevocable Medicaid qualifying trusts (MQTs), thus rendering the individuals eligible for Medicaid, while simultaneously preserving the assets for their heirs. H.R.Rep. No. 265, 99th Cong., 1st Sess., pt.1, at 71 (1985). Disturbed by this practice, Congress, in enacting 42 U.S.C. § 1396(k), stated (1) Medicaid is a program designed to provide basic medical care for those lacking the resources to care for themselves, and (2) techniques that potentially enrich heirs at the expense of

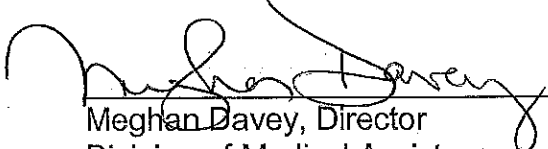
poor people are unacceptable. Id. at 71-72. To remedy the situation, Congress proposed a bill to treat as available assets all self-settled trusts, under which the settlor could receive benefits at the trustee's discretion. Id. at 72. The amount deemed available to such people is the **maximum amount** that a trustee **could**, in the **full exercise of discretion**, distribute to that grantor, whether from income or from principal. Whether the trust was established for the purpose of enabling the grantor to qualify for Medicaid is irrelevant. Id. (emphasis added).

So a trust containing the assets of the Medicaid applicant is a countable available resource regardless of the purpose for which the trust was established, regardless of whether the trustees have or exercise discretion under the trust, regardless of any restrictions on when or whether distributions may be made from the trust, and regardless of any restrictions on the use of distributions from the trust. Any funds that individual places in his or her own trust are still counted as that person's resources even when they are in a trust. In re A.N., 430 N.J. Super. 235, 244 (App. Div. 2013). See also N.J.A.C. 10:71-4.11(e) and 42 U.S.C.A. § 1396p(d)(1)-(3). Thus, I am satisfied that the Initial Decision correctly upheld the denial of Petitioner's Medicaid application for excess resources.

THEREFORE, it is on this ^{15th} day of APRIL 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services