



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

J.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

WARREN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10279-2016

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file, the documents in the record and the Initial Decision. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is March 24, 2017, 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 7, 2017.

This matter arises from the termination of Petitioner's Medicaid benefits due to excess income. Petitioner had been receiving benefits under New Jersey Workability but has stopped working and is no longer eligible. Petitioner receives Social Security Disability (SSD) in the amount of \$949. He is also the beneficiary of a trust set up under his father's will. It is the disbursements from the trust that raise his income above the \$990 limit for New Jersey Care Special Medicaid Programs.

It must be noted that the trust here is not excluded as a Special Needs Trust pursuant to 42 U.S.C. § 1396p(d)(4)(A) as it does not contain Petitioner's assets. Rather testamentary trusts are not excluded or exempt resources for Medicaid eligibility purposes but are "dealt with using applicable cash assistance program policies." State Medicaid Manual § 3259.1.A.2 See also Social Security Procedures Operations Manual System (POMS) SI 01120.200. Any trust payments of income or corpus to pay to or for Petitioner's needs are considered for Medicaid eligibility purposes.

The POMS specifically addresses the situation here as a trust that contains the assets of a third party including a trust set up by will:

1. Trust principal is not a resource

If the trust principal is not a resource, disbursements from the trust may be income to the SSI recipient, depending on the nature of the disbursements. Regular rules to determine when income is available apply.

a. Disbursements which are income

Cash paid directly from the trust to the individual is unearned income.

Disbursements from the trust to third parties that result in the beneficiary receiving non-cash items (other than food or shelter), are in-kind income if the items would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt (see SI 00815.550 and SI 01110-210).

For example, if a trust buys a car for the beneficiary and the beneficiary's spouse already has a car which is excluded for SSI, the second car is income in the month of receipt since it would not be an excluded resource in the following month.

b. Disbursements which result in receipt of in-kind support and maintenance

Food or shelter received as a result of disbursements from the trust by the trustee to a third party are income in the form of in-kind support and maintenance and are valued under the presumed maximum value (PMV) rule. (See SI 00835.300 for instructions pertaining to the PMV rule. See SI 01120.200F for rules pertaining to a home.)

c. Disbursements which are not income

Disbursements from the trust other than those described in SI 01120.200E.1.a. and SI 01120.200E.1.b. are not income. Such disbursements may take the form of educational expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, entertainment, etc., (see SI 00815.400).

Disbursements made from the trust to a third party that result in the beneficiary receiving non-cash items (other than food or shelter) are not income if those items would become a totally or partially excluded non-liquid resource if retained into the month after the month of receipt (see SI 00815.550 and SI 01110.210).

For example, a trust purchases a computer for the beneficiary. Since the computer would be excluded from resources as household goods in the following month, the computer is not income (see SI 01130.430).

d. Reimbursements to a third party

Reimbursements made from the trust to a third party for funds expended on behalf of the trust beneficiary are not income.

Existing income and resource rules apply to items a trust beneficiary receives from a third party. If a trust beneficiary receives a non-cash item (other than food or shelter), it is in-kind income if the item would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt. If a trust beneficiary receives food or shelter, it is income in the form of in-kind support and maintenance (ISM).

SI 01120.200.B.15


I concur with the Initial Decision's findings that the trust is not a resource when determining Petitioner's Medicaid eligibility. However, the Initial Decision is correct that the funds coming out of the trust are counted towards Petitioner's eligibility. As such,

when combined with Petitioner's Social Security benefit of \$949, he is over the income limit of \$990. Thus, I concur with the ALJ's finding that Petitioner was properly terminated and hereby ADOPT the Initial Decision.

THEREFORE, it is on this 22nd day of MARCH 2017,

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services