



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

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

M.K., .
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES &
MORRIS COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 5523-2017

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 filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is August 24, 2017, in accordance with an Order of Extension.

Petitioner was denied Medicaid benefits due to excess resources. Morris County contends Petitioner was ineligible due to assets held in a trust. The trust was established by Petitioner, contains Petitioner's assets and she is a trustee. The terms

of the trust require that the income be paid to Petitioner. However, Petitioner is foreclosed to receive the principal of the trust. The record only identifies a Thrivent account as the trust asset. The account statement for December 2016 shows income of \$2,243.85. R-1 at D.

As the trust was established with Petitioner's assets, Medicaid analyzes the terms of the trust under both the asset availability rules and the transfer of asset rules.

Federal law specifically provides:

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

....

(C) Subject to paragraph (4) [about special needs trusts], **this subsection shall apply without regard to--(i) the purposes for which a trust is established, (ii) whether the trustees have or exercise any discretion under the trust, (iii) any restrictions on when or whether distributions may be made from the trust, or (iv) any restrictions on the use of distributions from the trust.**

....

(3)(B) In the case of an irrevocable trust--

**(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual,**.....

[42 U.S.C. §1396p(d) (emphasis added).]

The State Medicaid Manual (Transmittal 64) expand on the statute by stating that "where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust . . . [[p]ayments from income for from the corpus made to or for the benefit of the individual are treated as income to the individual-[and the] [i]ncome on the corpus which could be paid to or for the benefit of

the individual is treat as a resource available to the individual.” SMM § 3259.6.B. If the income is paid but was not for the benefit of the individual, that payment is a transfer or assets for less than fair market value and subject to penalty.


Based on my review of the record, I FIND that Petitioner was incorrectly denied benefits due to the value of the principal being attributed to her. However, Petitioner is entitled to the income from the trust which does affect her eligibility. If she received the income reflected on the December 2016 statement, it would render her ineligible unless she had a Qualified Income Trust (QIT). If she did not receive the income as she is entitled under the terms of the trust, the income she did not receive is considered a resource and would count towards the \$2,000 standard. If the income was paid to others, those payments are subject to the transfer rules. Moreover, the record is sparse as to any other assets transferred into the trust within the last five years. Those transfers would be subject to penalty. Thus, I ADOPT the Initial Decision with the understanding that the full application and trust accounting will be reviewed by Morris County as the trust may cause other barriers to or impacts on Petitioner’s Medicaid eligibility.

THEREFORE, it is on this <sup>14<sup>th</sup></sup> day of AUGUST 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED; and

That Petitioner’s application is RETURNED to Morris County for further review and action.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services