

State of New Jersey

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor

DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES PO Box 712 TRENTON, NJ 08625-0712

CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS Assistant Commissioner

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

J.W.,

PETITIONER.

DIVISION OF MEDICAL ASSISTANCE:

AND HEALTH SERVICES AND

SUSSEX COUNTY BOARD OF

SOCIAL SERVICES.

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 17922-2019

As Assistant Commissioner for 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 Decision is July 8, 2020 in accordance with an Order of Extension.

This matter concerns the denial for Petitioner's second application for Medicaid due to failure to provide information necessary to determine eligibility. The first application was not appealed. There were three financial accounts identified in the second application that needed verification. One of the accounts, Petitioner's bank account had a balance of over \$4,700 as of July 1, 2019. The Medicaid resource standard is \$2,000. The record contains no evidence that Petitioner provided verification that she met this resource standard.

Petitioner was also the beneficiary to a testamentary trust set up by Petitioner's husband who died in July 2013. The trust benefits Petitioner during her lifetime and permits her to access a portion of the principal each year. Upon Petitioner's death the remaining principal pays to contingent beneficiaries. Petitioner filed her second application for Medicaid in July 2019. At the time the trustee of the trust had filed a petition in New York to terminate the trust. The proposal was to pay the facility where Petitioner resides and divide the reminder between petitioner and the contingent beneficiaries. Petitioner had a guardian ad litem appointed in the New York matter, who represented to the court that Petitioner had not objection to the proposed termination of the trust. ID at 4. Sussex 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 discussed below, Petitioner's ability to direct a portion of the trust principal be paid directly to her or for her care creates an available resource for purposes of determining Medicaid.

The trust contains several provisions that address payments to Petitioner. At the outset, the trustee is mandated to pay the net income to Petitioner or for her benefit at least quarterly. Petitioner also has unrestricted authority to have the greater of \$5,000 or 5% of

the aggregate value of the trust paid to her or for her use every year. ID at 3. With the trust value in June 2019 at \$122,717.84, Petitioner had access to \$6,135.89 in resources from the trust, well in excess of the \$2,000 standard for Medicaid eligibility. ID at 4.

Additionally, the trustee is authorized to pay up to the full value of the trust to maintain Petitioner in the standard of living she was accustomed to at the time of her husband's death. The corporate trustee has asked a court in New York to enter an order to terminate the trust and pay the principal to cover Petitioner's care in the nursing home. ID at 4. Petitioner's guardian ad litem filed papers that there was no objection to the relief requested by the trustee.

The Initial Decision upheld the denial finding that the Petitioner had resources available to her care. The plain language of the trust document gives Petitioner the authority to access, at minimum \$5,000, from the principal of the trust. The trustee also has determined that Petitioner has the right to additional funds from the principal to maintain her lifestyle and pay for her nursing home care. ID at 3.

N.J.A.C. 10:71-4.1, a resource is considered available when the applicant has the right, power or authority to liquidate the asset or her share of it. The trust document mandates that Petitioner receive the net income and the right to demand \$5,000 or more from the trust principal. There is no trustee discretion in either of those provisions and Petitioner has the power to access these funds, which sets her available resources in excess of the \$2,000 limit. Moreover, the corporate trustee has determined that Petitioner has the right to receive the principal to pay for her nursing home care. That amount would put her well above the resource limit.

THEREFORE, it is on this 23 day of JUNE 2020,

ORDERED:

That the Initial Decision, as set forth above, is hereby ADOPTED.

Jennifer Langer Jacobs, Assistant Commissioner

Division of Medical Assistance and Health Services