



A "resource" is defined as "any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his/her support and maintenance." See 20 C.F.R. § 416.1201(a) and N.J.A.C. 10:71-4.1(b). If the individual has the right, authority or power to liquidate the property, it is considered a resource. Ibid. A resource is "countable" for purposes of eligibility determinations if it is "available to the applicant/beneficiary or any person acting on his or her behalf." N.J.A.C. 10:71-4.1(c)(3) (emphasis added). Some resources are excludable. The "cash surrender value of all life insurance policies owned and in the control of the individual, if the total face value of such policies does not exceed \$1,500," is excludable. N.J.A.C. 10:71-4.4(b). However, "if the total face value of such policies exceeds \$1,500, the total cash surrender value of all policies shall be included as a resource, countable toward the appropriate resource maximum." N.J.A.C. 10:71-4.4(b)4i. Petitioner's life insurance policy has a face value of \$1,121.01. Therefore, it is excludable.

Applicants may also choose to set up a separate account with funds set aside for burial expenses. An examination of the burial regulations at N.J.A.C. 10:71-4.4(b)9 shows that a couple may claim \$1,500 each to pay for burial costs if that amount prevents eligibility. This amount is reduced by the amount held in an irrevocable burial trust. N.J.A.C. 10:71-4.4(b)9ii(1)(A). Funds set aside for burial are also excludable provided they meet certain qualifications. Funds which are specifically set aside for burial, including "revocable burial contracts, burial trusts and any separately identifiable assets which are clearly designated as set aside for the expenses connected with an individual's burial, cremation or other funeral arrangements" are excludable. N.J.A.C. 10:71-4.4(b)9. Additionally, "if an individual could be eligible with the application of this exclusion and the individual alleges that funds are set aside for burial, she must provide an affidavit" to that effect. N.J.A.C. 10:71-4.4(b)9ii(1). Petitioner must also show that the funds to be excluded are not comingled with any other funds or assets and are already designated as set aside for burial. N.J.A.C. 10:71-4.4(b)9ii(1)(B). In the event that the funds are not so designated, "the funds may be excluded

if the individual attests in writing that she intends to use the funds for her burial and agrees to submit within 30 days, documentary evidence that the funds have be designated as set aside for burial.” Id.

Federal Medicaid law allows applicants to prepay their funeral arrangements and have those resources be excluded from determining Medicaid eligibility through an irrevocable trust. Federal Medicaid regulations prohibit funds set aside for burial to be used for any other purpose. As a result, the State statute allows for burial arrangements to be made through burial trusts funded by either cash or the proceeds of assigned life insurance policies or through an insurance policy purchased for the express purpose of paying for the funeral. N.J.S.A. 2A:102-13 et seq. However, in order for the trust arrangement to be excluded from the eligibility determination, two criteria must be met – 1) the applicant must irrevocably relinquish or assign the funding source, whether it is cash or the eventual payout of life insurance to the trustees and 2) the State of New Jersey will receive any funds remaining after the funeral bill is paid. N.J.S.A. 2A:102-19 and -20.

Petitioner submitted, for the record, a partially executed copy of a proposed burial contract for funeral expenses totaling \$8,540. The document was completed and signed only by Petitioner’s Power of Attorney. While the document appears to come from a particular funeral home, it is not signed by anyone at the funeral home. Petitioner also did not provide any proof of payment. Therefore, although the Petitioner claims to have an irrevocable burial trust, I find no evidence that this proposal amounts to a fully executed irrevocable burial trust. Consequently, there is no way to know if Petitioner funded this proposed burial trust or if the funds for said contract remained available to Petitioner as a resource or were transferred in some other way.

Accordingly, I am REVERSING the Initial Decision and RETURNING this matter to MCBSS to determine if the Petitioner did in fact fund this proposed burial contract or, in the alternative if any funds set aside for burial met the requirements for exclusion, and reconsider Petitioner’s eligibility in light thereof.

THEREFORE, it is on this 3rd day of AUGUST 2021

ORDERED:

That the Initial Decision is hereby REVERSED and RETURNED to MCBSS to determine Petitioner's eligibility in accordance with this Final Agency Decision.



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Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services