

This matter concerns the effective eligibility date for Petitioner's application for Medicaid. Salem County Board of Social Services received an application in March 2018. Petitioner is under the guardianship of the Office of the Public Guardian (OPG). Eligibility was finally determined to be effective November 1, 2019 when Petitioner's resources met the \$2,000 limit. The decision, which upholds the eligibility date, frames the issue as whether Petitioner's trust met the requirements of a Special Needs Trust (SNT) pursuant to 42 U.S.C. § 1396p(d)(4)(A) and N.J.A.C. 10:4.11(g)(1) or whether it would be considered an available asset. However, the information in the file does not support the analysis of the trust as an SNT was correct. Rather the record shows that the Initial Decision correctly determined that the resource in question- a Prudential Annuity Service product – was ever in the trust. For the reasons that follow, I ADOPT the finding that the eligibility date was correct.

Petitioner's application disclosed that she was the beneficiary of a testamentary trust where the grantor was Prudential. R-1c. Two trust documents were presented. The first trust originated from the will Petitioner's aunt that set up a trust from a percentage from the proceeds of the sale of her house and her residual estate. That trust was to pay Petitioner's special needs including but not limited to her health, education and maintenance. R-1f. In 2013 the trustee requested that Superior Court reform the trust to restrict Petitioner's access to those funds. Upon Petitioner's death the remaining principal pays to other relatives. The record does not show if Petitioner responded or took any action in relation to this reformation.

The trust was reviewed incorrectly under the requirements of N.J.A.C. 10:4.11(g)(1). Rather 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 such, the trust would not need to meet the requirements of an SNT such as having a repayments provision. Rather, there would be a review of the assets of the trust that are used for Petitioner’s benefit.

However, the asset at issue here – Prudential Annuity product - does not appear to be attached to or part of the testamentary trust. R-1j. Petitioner’s aunt directed that the proceeds from the sale of her home and her residual estate be distributed to her nieces and nephews with Petitioner’s share being placed in trust. The contention that the Prudential Annuity was part of the testamentary trust is simply not borne out by the record or the final disbursement of the account.

Throughout the OPG’s accounting ledger, there are payments from Prudential. In January 2018, \$15,000 was received from Prudential with \$388.58 in May 2018. R-1i. In September 2019, Petitioner liquidated the Prudential account and received a check in the amount of \$77,635.30. That check lists Petitioner was the owner of the account as well as the annuitant of a non-qualified Premier Retirement account. R-1j. Under N.J.A.C. 10:71-4.1, a resource, including a retirement account, is considered available when the applicant has the right, power or authority to liquidate the asset or her share of it. The disbursement check fails to show that this account was part of a trust or there was any restriction on Petitioner’s access to the funds. As such, it was correctly considered Petitioner’s asset until it was spent down.

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

ORDERED:

That the Initial Decision setting the eligibility date of November 1, 2019, as set forth above, is hereby ADOPTED.



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