



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 07845-25

AGENCY DKT. NO. N/A

J.L.

Petitioner,

v.

**PASSAIC COUNTY BOARD
OF SOCIAL SERVICES,**
Respondent.

Ashish A. Agrawal, Esq., for petitioner (Legal Services of New Jersey, attorneys)

Migdalia Cruz, Esq., for respondent

Record Closed: October 14, 2025

Decided: October 31, 2025

BEFORE: **WILLIAM J. COURTNEY, ALJ:**

STATEMENT OF THE CASE

Petitioner J.L. appeals the termination of his Medicaid benefits by Respondent the Passaic County Board of Social Services (PCBSS). The issue to be decided is whether a testamentary trust to which petitioner is a beneficiary is an excludable asset for purposes of Medicaid eligibility.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The parties do not dispute the relevant facts; rather, they dispute the relevant law. J.L. suffered a traumatic brain injury after falling off a ladder. Following this injury, J.L. experienced regular seizures.

On October 6, 2004, Margaret Longden, J.L.'s mother, signed her Last Will and Testament (the Will). The Will created an irrevocable trust for the benefit of J.L. (the Trust). On July 1, 2018, Margaret Longden passed away. On July 12, 2018, an irrevocable trust account was created at Bank of America with Mary Longden, J.L.'s sister, as trustee and J.L. as the beneficiary.

J.L. is currently 70 years of age. His only source of income is Retirement, Survivors and Disability Insurance (RSDI) from the Social Security Administration (SSA). PCBSS found that J.L.'s income during the relevant period was \$1,215 per month. In 2025, J.L.'s income will be \$1,241 per month.

On December 26, 2019, J.L. applied for Aged, Blind, Disabled (ABD) Medicaid. On March 1, 2020, J.L. was granted ABD Medicaid, effective as of his reaching the age of 65 on February 22, 2020. At the time of this grant, PCBSS was not aware of J.L.'s Bank of America checking account (BOA account). In July 2020, PCBSS became aware of the BOA account.

During the COVID-19 pandemic, terminations of Medicaid were prohibited regardless of eligibility. This prohibition expired on April 1, 2023.

J.L.'s renewal application was due in March 2023. Having become aware of the BOA account, PCBSS produced a termination notice regarding J.L.'s ABD Medicaid on May 23, 2023.

On August 31, 2023, a hearing resulting from the termination notice took place before the Honorable Julio Morejon (Docket no. HMA 6263-23). During this hearing,

PCBSS abandoned the matter due to a New Jersey waiver granting an additional one-year extension to Medicaid recipients whose eligibility was compromised by resources or being over-income.

In June 2024, J.L. submitted a renewal packet wherein he disclosed the BOA account. Due to a backlog of extended cases, J.L.'s application was not processed until February 2025. On March 6, 2025, PCBSS issued a letter notice to J.L. informing him that his benefits were terminated effective March 31, 2025.¹

J.L. requests that PCBSS's termination of his Medicaid benefits be overturned and this matter be remanded for approval of benefits, arguing that: (1) the Trust is not an available resource to J.L.; (2) as an unavailable resource, the Trust should be excluded from determination of J.L.'s Medicaid eligibility; and (3) if the Trust is excluded, J.L. meets both the income and resource requirements for ABD Medicaid benefits.

PCBSS requests that the termination be upheld, arguing that: (1) the Will and the BOA account are defective instruments to establish a Special Needs Trust (SNT); (2) because it fails to meet the requirements of an SNT, the BOA account must be counted as a resource for J.L.'s Medicaid eligibility; and (3) the BOA account exceeds the resource limit and renders J.L. ineligible for Medicaid.

LEGAL DISCUSSION

I. Standards for ABD Medicaid Eligibility.

Medicaid is a program established by Title XIX of the Social Security Act. 42 U.S.C.A. §§1396 et seq. A cooperative venture between a state and the federal government, its purpose is "to provide medical assistance to persons whose income and resources are not sufficient to meet the costs of necessary care and services." L.M. v. Division of Medical Assistance & Health Services, 140 N.J. 480, 484 (1995), (quoting Atkins v. Rivera, 477 U.S. 154, 156 (1986)). New Jersey's Medicaid program derives its

¹ J.L. was granted continuing benefits pending resolution of the instant appeal.

authority from the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1.2 - 19.1 and the regulations promulgated thereto. N.J.A.C. 10:49 et. seq. Consistent with the recognized policy that Medicaid is designed for needy individuals, the Legislature has directed that Medicaid benefits "shall be last resource benefits notwithstanding any provisions contained in contracts, wills, agreements or other instruments." N.J.S.A. 30:4D-2.

The regulations governing Special Medicaid Programs, including ABD Medicaid, are set forth in N.J.A.C. 10:72-1 et. seq². Pursuant to the rulemaking authority granted by statute (N.J.S.A. 30:4D-7), the Commissioner of the Department of Human Services has adopted regulations governing participation in the ABD Medicaid program including income and resource eligibility standards. N.J.A.C. 10:72-1.1 to -9.8. The resource criteria and eligibility standards apply to all applicants and recipients, and participation in the ABD Medicaid program must be denied or terminated if an individual's income or resources exceed certain prescribed limits. N.J.A.C. 10:72-4.1(a); N.J.A.C. 10:72-4.4; and N.J.A.C. 10:72-4.5(b). 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. N.J.A.C. 10:71-4.1(b). In order to be considered in the determination of Medicaid eligibility the resource must also be "available." 42 U.S.C.A. §1396a(a)(17)(B); N.J.A.C. 10:71-4.1(c). A resource is considered available to an individual if: (1) the person has the right, authority, or power to liquidate real or personal property, or his or her share of it; (2) the resource has been deemed available to the individual, in accordance with the provisions of N.J.A.C. 10:71-4.6; or (3) the resource arises from a third-party claim or action. Id. As in all welfare eligibility determinations, the applicant bears the burden of establishing program eligibility. Alford v. Somerset County Welfare Board, 158 N.J. Super. 302, 310 (App. Div. 1978).

Here, it is undisputed that J.L.'s income is within the eligibility threshold. See Petitioner Brief at 2; see Ex. P-1. The sole eligibility issue remaining is J.L.'s countable resources, which PCBSS calculated as \$52,808.13 – well in excess of the \$4,000.00

² Many of the Special Medicaid Program regulations reference frameworks provided by the Medicaid Only regulations. N.J.A.C. 10:71-1 et. seq.

program resource limit of "\$4,000 for an individual." N.J.A.C. 10:72-4.5(b); see also Ex. P-1.

II. The Trust is not a Special Needs Trust.

PCBSS argues that the basis for the termination of J.L.'s ABD Medicaid benefits is that the "Will and the BOA Account do not meet the requirements for a Special Needs Trust." Respondent Brief at 3. In support of this argument, PCBSS highlights a list of deficiencies which includes: (1) the contention that an eligible trust cannot be established through a will, pursuant to N.J.A.C. 10:71-4.11(5)(d); and (2) failure to meet multiple requirements of N.J.A.C. 10:71-4.11(g)(1).

This argument is inapposite. While J.L. previously did described the Trust as "an irrevocable special needs trust," he has since clarified that the Bank of America trust account is not a Special Needs Trust (SNT); it is a Testamentary Trust.

Furthermore, N.J.A.C. 10:71-4.11(5)(d) neither stands for the blanket proposition that a trust cannot be established by will nor does it exist³. In fact, the only portion of that regulation referencing the establishment of a trust by will states that (emphasis added):

Individuals to whom the trust provisions apply shall include **any individual who establishes a trust and who is an applicant or beneficiary of Medicaid**. An individual shall be considered to have established a trust if any of his or her assets, regardless of the amount, were used to form part or all of the corpus of the trust and if any of the parties described as a grantor in ©1 above established the trust, **other than by will**.

[N.J.A.C. 10:71-4.11(d). *emphasis added*]

This regulation describes limitations on self-settled trusts wherein the grantor and the Medicaid applicant are the same person and does not apply to the instant matter wherein the subject trust is a third-party testamentary trust.

³ This errant citation is likely the result of either a typographical error or confusion regarding the proximity of N.J.A.C. 10:71-4.11(c)(5) and N.J.A.C. 10:71-4.11(d).

Prior administrative proceedings have confirmed that N.J.A.C. 10:71-4.11(d) applies only to trusts funded by the individual applying for benefits or where the trust contains a combination of assets from the individual and a third-party. See E.M. v. Burlington County Board of Social Services, 2014 N.J. AGEN LEXIS 388, 7 (June 30, 2014) (“a trust containing only the assets of an individual not within any of the enumerated categories will not be subject to the provisions set forth in N.J.A.C. 10:71-4.11”); see also R.F. v. Middlesex County Board of Social Services, 2025 N.J. AGEN LEXIS 454, 2 (August 22, 2025) (“if petitioner did not help fund the trust, the trust provisions found in N.J.A.C. 10:71-4.11 are not applicable”).

As the provisions of N.J.A.C. 10:71-4.11(g)(1) describe the requirements of a special needs trust, and as it has been established that J.L. does not base the requested relief on the contention that the Trust is a special needs trust, that argument is similarly unavailing.

III. The Trust is an excludable asset for the purposes of Medicaid Eligibility because it is a testamentary trust and the resources therein are not available to J.L.

Unless specifically excluded, all liquid and non-liquid resources are considered countable in the determination of Medicaid eligibility. N.J.A.C. 10:71-4.1(b); N.J.A.C. 10:71-4.2(a). However, those resources classified as excludable “shall not be considered either in the deeming of resources or in the determination of eligibility for participation in [Medicaid].” N.J.A.C. 10:71-4.4(a). Among those specified excludable resources is the “value of resources which are not accessible to an individual through no fault of his or her own.” N.J.A.C. 10:71-4.4(b)(6) (“such resources include . . . irrevocable trust funds”).

Specifically, “where the trust is irrevocable and where the trustee has sole discretion to invade the principal, those funds may not be considered an accessible asset unless explicitly made available for medical expenses by the trust agreement.” McKenna v. Division of Medical Assistance & Health Services, 1997 N.J. AGEN LEXIS 261, 9 (April

7, 1997).⁴ "Even where a trust's stated intent is to supplement public assistance, as long as it is within the trustee's discretion whether to invade the principal, the assets are not available for purposes of determining Medicaid eligibility." *Id.* at 44 (citations omitted). "The test is whether the individual has the 'right, authority or power' to the resource pursuant to N.J.A.C. 10:71-4.1(c)." I.L. v. Division of Medical Assistance & Health Services, HMA 4713-04, Final Decision (January 27, 2005) <<http://lawlibrary.rutgers.edu/oal/search.html>>. For example, this standard was applied in A.M. v. DMAHS, where the ALJ held that:

The [trust] is irrevocable. A.M. was not the grantor, nor was the Trust funded by any of his assets. A trustee other than A.M. has the sole discretion to disburse the Trust funds and A.M. cannot compel the distribution of the corpus or income. Nor is A.M. the beneficiary of any remaining funds when the [trust] is terminated. The [trust] is therefore unavailable to him and is excludable as a resource under N.J.A.C. 10:71-4.4(b)(6).

[HMA 8525-05, Initial Decision (May 12, 2006), adopted, Director (June 26, 2006) <<http://lawlibrary.rutgers.edu/oal/search.html>>.]

Similarly, in E.K. v. DMAHS, the Director reversed an initial decision finding that a testamentary trust was an available resource, stating that:

This Trust should not counted as a resource because E.K. was not the grantor, the Trust was not funded with any assets of E.K., the Trustee other than E.K. had the sole and absolute discretion to disburse the Trust funds, E.K. cannot compel distribution of corpus or income, and E.K. is not a beneficiary of any of the funds when the trust is terminated.

[HMA 4434-97, Final Decision (January 29, 1998).]

In M.M. v. DMAHS, the Director reversed the ALJ's determination that trust resources were countable on functionally duplicative grounds, finding that "in this case, the individual is not the grantor, the trust is irrevocable, and the trust grants considerable

⁴ McKenna applies only to trusts created for the benefit of third parties. Trusts created for the benefit of the grantor are subject to N.J.A.C. 10:71-4.11.

discretion to the trustee." 1996 N.J. AGEN LEXIS 294 (February 20, 1996).

In summary, so long as: (1) the beneficiary of the trust is not the grantor; (2) the trust has not been funded with beneficiary assets; (3) the beneficiary of the trust cannot compel distributions; and (4) upon termination, the beneficiary will not receive any remaining trust assets; the assets of an irrevocable testamentary trust should be excluded when computing eligibility for Medicaid.

This understanding is mirrored in the Social Security Program Operations Manual System⁵, which states (emphasis added):

If an individual does not have the legal authority to revoke or terminate the trust or to direct the use of the trust assets for their own support and maintenance, **the trust principal is not the individual's resource** for SSI purposes If a trust is irrevocable by its terms and under State law, and the trust beneficiary cannot control or direct use of the trust assets for the trust beneficiary's support and maintenance, **the trust is not a resource**.

[POMS §01120.200(D)(2). emphasis added]

Here, the Will clearly describes Payments of Income and Principal under the Trust as follows (emphasis added):

The making and the amount of any payment from the trust assets **shall be totally and solely within the discretion of the trustees** Neither the primary beneficiary nor any person acting on his behalf as guardian, conservator, guardian ad litem, attorney, or agent, except for the trustees alone, shall have any right, power, or authority to liquidate the trust.

[Ex. P-4 at Paragraph THIRD (g)(ii). emphasis added]

⁵ Pursuant to 42 U.S.C.A. §§1396a(a)(10)(C)(i) and (r)(2)(A) & (B) the eligibility methodology for medical assistance may be "no more restrictive than the methodology employed under the supplemental security income program."

The Will also provides that the Trust "shall terminate upon the death of the primary beneficiary" at which point "any and all principal and accumulated income remaining shall be distributed in equal shares" to J.L.'s daughters. Id. at (g)(iv-v). If the trustees determine that the Trust no longer meets its stated purposes, "no distribution of the trust property shall be made . . . except upon the review and written certification of . . . [an] attorney with expertise in the fields of estate planning, elder law, and public benefits." Id. at (g)(iii).

It is indisputable, based on current record evidence, that J.L.: (1) is not the grantor of the Trust; (2) has not funded the Trust; (3) cannot compel distributions from the Trust; and (4) will not receive any Trust assets in the event of termination. Consequently, the assets of the Trust are excluded when computing J.L.'s eligibility for Medicaid, pursuant to N.J.A.C. 10:71-4.4(b)(6).

IV. The Trust neither reduces nor excludes coverage or payment for health care-related goods and services.

While not raised by PCBSS at this time, its briefing relying exclusively on characterization of the Trust as a Special Needs Trust, a common argument against the exclusion of a testamentary trust in Medicaid eligibility is references to those measures precluding asset hiding. In particular, N.J.S.A. 30:4D-6(f) states:

Any provision in a contract of insurance, health benefits plan or other health care coverage document, will, trust agreement, court order or other instrument which reduces or excludes coverage or payment for health care-related goods and services to or for an individual because of that individual's actual or potential eligibility before or receipt of Medicaid benefits shall be null and void, and no payments shall be made under this act as a result of any such provision.

[Id. emphasis added]

This argument has been addressed and dismissed by prior administrative proceedings based on the language of the trust instrument. For example, in E.O. v. DMAHS, the ALJ found that provisions directing that trust funds may be used "to cover those expenditures that Medicaid would not . . . are meant to supplement Medicaid

benefits" and are distinguishable from those precluded by N.J.S.A. 20:4D-6(f). 2001 N.J. AGEN LEXIS 1260, 23 (January 18, 2001).

Here, in describing the Trust Purpose, the Will states that:

I recognize that governmental and charitable programs, in themselves, contain many gaps that, if unaddressed, will greatly reduce the possibility of the primary beneficiary's maintaining himself as independently as possible and having the capacity to meet his future needs for residential, personal, and other non-medical services. It is, therefore, my intent and direction that the trustees use the principal and income of the trust to **provide the primary beneficiary with those benefits and services and only those benefits and services** that, in the trustees' judgment, are **not otherwise available to the primary beneficiary from other sources** as or when needed for his welfare.

[Ex. P-4 at Paragraph THIRD(g)(i). *emphasis added*]

For comparison, the language under review in E.O., found to be unobjectionable in the context of N.J.S.A. 20:4D-6(f), was as follows:

When, in the discretion of the Trustee, such requisites are not being provided by any public agency, office or department of the state where my Beneficiary lives, or of the United States, or are **not otherwise being provided by other sources of income available to my Beneficiary** My Trustee shall be liberal in authorizing expenditures to meet those needs of Beneficiary **that cannot be met through any government and private programs.**

[E.O., 2001 N.J. AGEN LEXIS 1260, 23. *emphasis added*]

The relevant language of the Will clearly describes the supplementation of Medicaid benefits and not the reduction or exclusion described by the statute. Consequently, N.J.S.A. 20:4D-6(f) does not provide a basis for the nullification of the relevant Trust terms.

For all of the above reasons, I **CONCLUDE** that the Respondent's termination of J.L.'s Medicaid benefits was improper and that the matter must be remanded for an eligibility determination properly excluding the resources contained in the Trust, as represented by the BOA account. PCBSS has failed to adequately argue that the Trust should be included as an available resource. PCBSS relied exclusively on an inappropriate characterization of the Trust as a Special Needs Trust. The Trust is properly characterized as an irrevocable third-party testamentary trust. Furthermore, by its terms, the Trust meets neither the availability criteria of N.J.A.C. 10:71-4.1(c), nor the elements that would preclude exclusion pursuant to N.J.A.C. 10:71-4.4(b)(6).

As the resources represented by the Trust are not within J.L.'s right, authority, or power to liquidate; deemed available to J.L.; and do not arise from a third-party claim or action; and as J.L. has no ability to compel distributions or receive remainder assets from the Trust, the Trust is properly excluded from Medicaid eligibility determination.

ORDER

IT IS on this 31ST day of October 2025 **ORDERED** that:

1. The March 6, 2025 notice terminating J.L.'s medical benefits effective March 31, 2025 is **VACATED**; and
2. This matter is remanded to the Passaic Board of Social Services for a Medicaid eligibility determination excluding the resources contained in the Testamentary Trust.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical

Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, Mail Code #3, PO Box 712, Trenton, New Jersey 08625-0712**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



October 31, 2025

DATE

WILLIAM J. COURTNEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Witnesses

For petitioner:

Petitioner

For respondent:

John Koningswood, representative for PCBSS

List of Exhibits

For petitioner:

- P-1 Notice of Termination by PCBSS, dated March 6, 2025;
- P-2 SSA Benefit Verification Letter, dated August 11, 2025;
- P-3 Certification of Joseph Francis Longden, dated August 11, 2025;
- P-4 Last Will and Testament of Margaret Marilda Longden, dated October 4, 2024;
- P-5 Trust Documents from Bank of America
- P-6 Gary Mazart and Regina M. Spielberg, Trusts for the Benefit of Disabled Persons: Understanding the Difference Between Special Needs Trusts and Supplemental Benefits Trusts, New Jersey Lawyer, The Magazine: Disability Law, February 2009, 256-FEB N.J. Law 23

For respondent:

- R-1 Migdalia Cruz, Esq. letter dated September 2, 2025 and Passaic County Board of Social Services letter with attached documents (13 pages);
- R-2 Renewal Application, dated May 14, 2024;
- R-3 Explanation of Eligibility Determination;
- R-4 New Jersey Administrative Code N.J.A.C. 10:71-4.11