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**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**  
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**STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES**

T.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD

OF SOCIAL SERVICES

RESPONDENT.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**(consolidated)**

**OAL DKT. NO. HMA 03016-24**

**OAL DKT. NO. HMA 03704-24**

**OAL DKT. NO. HMA 12587-24**

**OAL DKT. NO. HMA 12588-24**

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Exceptions were not filed by either party in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 21, 2025, in accordance with an Order of Extension.

These consolidated matters arise from Ocean County Board of Social Services' (Ocean County) denying Petitioner's Medicaid applications for multiple reasons. Initially, Petitioner received a letter from NJ FamilyCare dated August 2, 2023, instructing Petitioner to apply for a different type of Medicaid because their current coverage would

expire due to Petitioner receiving Medicare. Petitioner requested a Fair Hearing, which was filed under docket number HMA 03704-24. Soon thereafter, Petitioner filed a Medicaid application with Ocean County, which was subsequently denied for failure to provide requested information required to determine eligibility. Petitioner requested a Fair Hearing, which was filed under docket number HMA 03016-24. Petitioner filed another application, which was denied for Petitioner being over the resource limit due to a Special Needs Trust. Petitioner requested a Fair Hearing on this denial and it was filed under docket number HMA 12587-24. Lastly, Petitioner received a second letter from NJ FamilyCare, similar to the August 2, 2023 letter mentioned above, and Petitioner filed a Fair Hearing request in response. This matter was filed under docket number HMA 12588-24. All four matters were consolidated by an Order for Consolidation dated January 14, 2025, with the parties agreeing that the issues surrounding the Special Needs Trust were the only outstanding issues. ID at 3. In March 2025, Petitioner filed a motion for summary decision and Ocean County filed a response to Petitioner's motion. Ibid.

Summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). No evidentiary hearing need be held if there are no disputed issues of material fact. Frank v. Ivy Club, 120 N.J. 73, 98, cert. denied, 498 U.S. 1073 (1991). The court is to consider whether the competent evidence presented, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged disputed issues in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

In this matter, Petitioner is a sixty-five year old man who resided with their father until he passed away in 2019. ID at 3. When younger, Petitioner was injured in a car

accident and suffered a traumatic brain injury. Ibid. Petitioner receives twenty-four hour assistance at a rehabilitation center. Ibid. When Petitioner's father passed away, he left his estate to Petitioner. Ibid. Petitioner recognized that the inheritance would exceed Medicaid's resource limit, so Petitioner sought to establish a Special Needs Trust. Ibid. Petitioner retained the Law Offices of Hanlon Niemann & Wright, P.C. to establish a First-Person Special Needs Trust. Ibid. After applying, and satisfying Ocean County's requests for information, Ocean County denied Petitioner's application. Ibid.

During the Fair Hearing, Ocean County stated that Petitioner's application was denied for three primary reasons. Ibid. First, because the Trust is revocable due to a statement of omission in the "Irrevocability" section in the Trust document. Ibid. Second, because the trustee has discretion to distribute the Trust in times of emergency or material change, which makes the Trust amendable, authorizes unlawful distributions, and may make the entire Trust amount accountable. ID at 3-4. Third, the Trust has been used for medical services that would be covered by Medicaid, which runs contrary to state guidance on how the Trust may be used without becoming a countable resource. ID at 4.

When addressing the first issue, in the Initial Decision, the Administrative Law Judge (ALJ) summarized Petitioner's counsel's Brief, which explained that a scrivener's error was the cause of Ocean County's concern that the Trust was revocable on its face. ID at 7. The ALJ concluded that New Jersey law is well settled that the settlor's intent defeats such an error and that the language of the Trust, other than the scrivener's error, is clear that the Trust was intended to create a Special Needs Trust. Ibid. I agree. N.J.S.A. 3B:31-32 states that "Nothing in this act shall prevent the court from construing the terms of a trust, even if unambiguous, to conform to the settlor's probable intent." Petitioner's counsel made a scrivener's error when drafting the Trust document and

Petitioner's intent to create a Special Needs Trust is clear from the record.

The second issue identified by Ocean County was that language in the Trust document indicates that the trustee may administer the Trust as needed if there is an emergency or material change in circumstances. ID at 8. Ocean County's position is that this language makes the Trust revocable. Ibid. The ALJ concluded that there is nothing in the language of the Trust that would allow the trustee to make payments that are not for the sole benefit of Petitioner, nor does the language suggest that the Trust itself could be revoked or amended. ID at 9. I agree with the ALJ's conclusion.

The third issue addressed by the ALJ is whether Petitioner's payment for dental services using Trust funds is a violation of N.J.A.C. 10:71-4.11(g)(1)(iii). The applicable section of N.J.A.C. 10:71-4.11(g)(1)(iii) states:

iii. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.

(1) If the trust provides for food, clothing or shelter, such expenditures shall be considered income under Social Security and Medicaid eligibility rules.

The ALJ determined, regarding payment for medical services, that the law provides only that the trust must state that its purpose is to supplement, not supplant benefits. ID at 10. The ALJ also determined that the law does not prohibit trust funds from being used for medical care but acknowledged that distributions of trust funds for covered services are inappropriate. ID at 11. Ultimately, the ALJ found that a single distribution of trust funds for dental care was insufficient to deem the Special Needs Trust invalid. Ibid. I agree that this single distribution, while reviewable by Ocean County, is not sufficient to invalidate the Trust.

Based upon my review of the record and for the reasons set forth herein, I hereby

ADOPT the Initial Decision in this matter and find that the Special Needs Trust is irrevocable, that there has not been a consistent misuse of the trust funds, and that this matter was ripe for summary decision.

THEREFORE, it is on this 15th day of AUGUST 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED, as set forth herein and that Ocean County's denial was improper.

*Gregory Woods*

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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance and Health Services