



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. HMA 12057-25

AGENCY DKT. NO. N/A

**T.L.,**

Petitioner,

v.

**MIDDLESEX COUNTY**

**BOARD OF SOCIAL SERVICES,**

Respondent.

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**James L. Hatzell, Esq.**, for petitioner (Bernetich, Hatzell & Pascu, LLC, attorneys)

**Kurt Eichenlaub**, Fair Hearing Liaison/Human Services Specialist 3, for  
respondent, appearing pursuant to N.J.A.C. 1:1-5.4(a)(3)

Record Closed: December 1, 2025

Decided: December 9, 2025

**BEFORE TRICIA M. CALIGUIRE, ALJ:**

## STATEMENT OF THE CASE

Petitioner T.L. appeals the decision of respondent, Middlesex County Board of Social Services (MCBSS), to deny his Medicaid application because his resources exceed the eligibility limit, under N.J.A.C. 10:71-4.11(e), (g).<sup>1</sup>

## PROCEDURAL HISTORY

On May 29, 2025, respondent notified T.L., by letter to his sister, J.L., that his application for Medicaid was denied. T.L. filed a timely request for a fair hearing with the Division of Medical Assistance and Health Services (DMAHS), which transmitted this matter to the Office of Administrative Law (OAL), where it was filed as a contested case on July 9, 2025. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On October 16, 2025, the parties appeared for the hearing by telephone with a call-in number. The parties agreed that the facts are not in dispute, and the only issue is whether respondent had sufficient legal basis to deem assets of a trust of which T.L. is a beneficiary as resources available to T.L. Accordingly, the hearing was adjourned, and a schedule for petitioner's proposed motion for summary decision was set. On October 27, 2025, petitioner filed a motion for summary decision in his favor; MCBSS submitted its response on November 25, 2025, and petitioner replied on December 1, 2025. On December 1, 2025, I closed the record, and the motion is now ripe for review.

## FACTUAL DISCUSSION AND FINDINGS

There is no dispute as to the following background **FACTS**, and therefore, I **FIND**:

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<sup>1</sup> The May 29, 2025 adverse action notice cites N.J.A.C. 10:72-5.1 as the regulation which governs the eligibility determination, but that regulation describes the criteria that must be included in an adverse action notice. The denial of T.L.'s application is not required by this regulation, which provides that "all notices of agency decision shall state in clear and simple language, the nature of the agency decision and an accurate and factual legal basis for the decision." Given that this matter involves a denial of benefits and petitioner has at all times been represented by counsel, any prejudice to petitioner by this error is limited.

T.L. is a sixty-year-old single man. R-1. He suffers from mental health issues and is unemployed. Ltr. Br. of Pet'r in Support of Motion for Summary Decision (Oct. 27, 2025) (Pet'r's Br.), at 1; R-1. For some time prior to January 2025, T.L. received Supplemental Security Income. Pet'r's Br., Ex. D.

On July 9, 2003, E.M.L., T.L.'s mother, established the E.M.L. Revocable Trust, and named her three children, J.L., M.L.<sup>2</sup>, and T.L., as beneficiaries. R-3. The Trust provides, in pertinent part:

After [E.M.L.] is not living, the Trustee<sup>3</sup> shall divide this Trust . . . into equal shares . . . for each of my children [which] shall be distributed as follows:

...

Each respective share set aside for M.L. and T.L. shall be held in a separate trust primarily for the benefit of such child for whom the share was created and shall be invested and distributed as follows:

- (1) During such child's lifetime:
  - (a) The Trustee may, from time to time, distribute to or for the benefit of such child from the net income and from the principal, such amounts, if any, as the Trustee determines in the Trustee's sole, absolute, and unfettered discretion.
  - (b) Any net income not so distributed shall be accumulated and from time to time added to principal.
  - (c) No interest in the principal or income of this Trust . . . shall be subject to any creditor claims or to any legal process prior to the actual receipt by the beneficiary.
  - (d) In determining whether or not to make any distributions of net income or principal, the Trustee need not, but may, in the Trustee's sole, absolute, and unfettered discretion, take into account the assets, income, and other resources available to such child apart from this Trust.

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<sup>2</sup> M.L. suffered from multiple sclerosis and has died. The distribution of her share of the Trust is irrelevant to this matter.

<sup>3</sup> At all relevant times, J.L. was a beneficiary of the Trust and served as trustee. R-3; Pet'r's Br., Ex. C.

(e) The Trust is not a resource which is available to any beneficiary except in the Trustee's discretion. Under no circumstances can such child compel a distribution from this Trust for any purpose. The Trustee's sole and independent Judgment, rather than any other person's determination, is intended to be the criterion by which disbursements are made, even if the Trustee elects to make no disbursements at all.

[R-3 at 2, ¶¶ 5 (B)(1)(a–e).]

Petitioner contends that the L. Trust for the Benefit of T.L. (the T.L. Trust) was created on July 9, 2003, "under the [E.M.L. Revocable] Trust." Pet'r's Br. at 1. Petitioner further contends that the T.L. Trust qualifies as a third-party special needs trust, under N.J.S.A. 3B:31-37. Id. at 2. There is no evidence, however, that the T.L. Trust is a separate document, nor is the T.L. Trust specifically referenced by name in the Trust. The T.L. Trust is referred to only as "a separate trust primarily for the benefit of [T.L.]" R-3 at 2, ¶ 5 (B).

E.M.L. died on February 4, 2017. Pet'r's Br., Ex. A. J.L. became the trustee of the Trust and the T.L. Trust.

Two accounts, an Ameriprise Financial investment account, and a PNC Bank checking account, were established by J.L. as trustee for the T.L. Trust. R-4; R-5. As of February 28, 2025, and April 7, 2025, respectively, the Ameriprise account and the PNC Bank account each had balances in excess of the relevant Medicaid eligibility limit. R-4; R-5. Respondent included these accounts when calculating the resources available to T.L.

On February 10, 2025, J.L. sent a letter to respondent explaining that T.L. did not have access to the funds in either the Ameriprise account or the PNC Bank account and that J.L., as trustee, uses the PNC Bank account to pay for T.L.'s needs, including phone, internet, utilities, transportation, pet supplies, and clothing. Pet'r's Br., Ex. D.

## LEGAL ANALYSIS AND CONCLUSIONS

Summary decision is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is presented and testimony is taken. The procedure is equally applicable in judicial as well as executive branch administrative proceedings. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). The standards for determining motions for summary judgment are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67 (1954), and later in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving “the absence of a genuine issue of material fact,” and all inferences of doubt are drawn against the movant. Judson, 17 N.J. at 74–75.

Summary decision is appropriate when “the evidence ‘is so one-sided that one party must prevail as a matter of law.’” Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). In reviewing the proffered evidence to determine the motion, the judge must be guided by the applicable evidentiary standard of proof that would apply at trial on the merits.

Petitioner T.L. has the burden of demonstrating, by a preponderance of the credible, competent evidence, that the decision of respondent in denying his Medicaid application was incorrect and should be overturned. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). This dispute can be addressed by application of the law to the above-described undisputed facts, and, therefore, I **CONCLUDE** that summary decision is appropriate in this matter.

Congress created the Medicaid program under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 to 1396w-8. Medicaid is funded by the federal government and administered by the states, including New Jersey. A.K. v. Div. of Med. Assistance and Health Servs., 350 N.J. Super. 175 (App. Div. 2002). Participating states must establish Medicaid eligibility standards that conform to the parameters of the federal statute and the regulations promulgated by the Secretary of Health and Human Services. Wis. Dep't of Health & Family Servs. v. Blumer, 534 U.S. 473, 479 (2002). New Jersey participates in Medicaid through the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5. The Commissioner of the Department of Human Services has promulgated regulations implementing New Jersey's Medicaid Only program, including income and resource eligibility standards. N.J.A.C. 10:71-1.1 to -9.5.

Respondent issued its decision to deny T.L.'s eligibility for Medicaid benefits in accordance with N.J.A.C. 10:71-4.11(e)(2), which states that "[t]he portion of the corpus of [an irrevocable trust] that could be paid to or for the benefit of the individual shall be treated as a resource available to the individual[.]" As stated above, the balances of the two accounts established for the benefit of the T.L. Trust exceeded the eligibility limit for a single applicant.

Petitioner contends that the T.L. Trust is a "special needs trust," as defined in N.J.S.A. 3B:31-37, and therefore, the assets of the T.L. Trust cannot be considered as a resource available to T.L. Pet'r's Br. at 3. To qualify as a special needs trust under New Jersey law, a trust must meet the specific criteria described at length in N.J.A.C. 10:71-4.11(g). Given that much of N.J.A.C. 10:71-4.11(g)(1) applies here, I have annotated the reproduced regulation, showing in italics the application of the regulation to the Trust and to the T.L. Trust. The regulation provides, in pertinent part:

1. **A special needs trust**, that is, a trust containing the assets of a disabled individual and which is established prior to the time the disabled individual reaches the age of 65 and which is established for the sole benefit of the disabled individual by a parent, grandparent, legal guardian of the disabled individual or a court, may be excluded from the rules regarding the treatment of a trust.

*There is no dispute that T.L. was disabled and less than sixty-five years old at the time his mother established the Trust. By the terms of the Trust, a second trust (named later as the T.L. Trust) was established upon the death of E.M.L. The Trust was established by E.M.L. for the benefit of all her children. While the T.L. Trust was arguably established by the Trust for the sole benefit of T.L., see Pet'r's Br., Ex. D, there is no separate trust document and no basis to conclude that any of the remaining criteria were met.*

1. To qualify for the exclusion, the trust shall contain the following provisions:
  - i. The trust shall be identified as an OBRA '93 trust established pursuant to 42 U.S.C. § 1396p(d)(4)(A).

*The T.L. Trust is not identified as an "OBRA 93" trust.*

- (1) The trust shall not contain any provisions intended to give anyone or a court the power to alter the form of the trust from an individual trust to a "pooled trust" under 42 U.S.C. § 1396p(d)(4)(C). Notwithstanding amendments to the trust solely to conform to the requirements of this subsection and/or 42 U.S.C. § 1396p(d)(4), there shall be no provisions permitting the trust to be altered for any other reasons.

*Under Paragraph 11(F), the trustee has "the power to divide property in any trust into separate trusts[.]" This provision appears to permit the alteration of the T.L. Trust.*

- ii. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary.

*While there is no T.L. Trust document, the Trust states that the corpus of the Trust shall be divided into three equal shares and the share "set aside for . . . T.L. shall be held in a separate trust primarily for the benefit of [T.L.]" but not solely for the benefit of T.L. R-3, ¶ 5(B).*

- (1) Only trusts which are intended for the sole benefit of the disabled individual are special needs trusts. Any trust

which provides benefits to other persons shall not be considered an individual special needs trust. If expenditures are made from the trust which shall also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit shall contribute a prorata share to the trust for the subsequent expenses associated with their use of the acquisition,

*See previous comment; otherwise, there is no explanation of who may also benefit from the T.L. Trust nor how payment for such benefit shall be made to the T.L. Trust.*

- 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.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- (1) If the trust provides for food, clothing or shelter, such expenditures shall be considered income under Social Security and Medicaid eligibility rules.
  - (2) It may be permissible for the trust to acquire property which is used to provide shelter for the trust beneficiary, but the trustee shall take care to ensure that such acquisitions do not create unintended problems (such as disqualifying someone for Federal benefits). Additionally, parents shall not be relieved of their duty to support their minor child, if they are capable of doing so. A minor's funds in a trust shall not be expended on routine support, unless the parents' income is insufficient for these expenses. N.J.S.A. 3B:12-43.
- iv. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3) and whether the trust beneficiary is competent at the time the trust is established.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- (1) If the trust beneficiary is a minor, the trustee shall execute a bond to protect the child's funds or shall get a court's permission not to do so.

*There is no dispute that T.L. was beyond the age of majority in 2003, when the Trust was established.*

- (2) If there is some question about the trust beneficiary's disability, independent proof may be required.

*Respondent has not challenged the characterization of T.L. as "disabled."*

- v. The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust.

*The Trust schedule, if any, was not provided; there is no T.L. Trust document to review.*

- (1) Subsequent additions made to the trust corpus shall be reported to the appropriate eligibility determination agency. Subsequent additions to the trust (other than interest on the corpus) shall cease when the trust beneficiary reaches age 65, or shall be subject to transfer provisions.

*No evidence of subsequent additions to the Trust or the T.L. Trust was provided.*

- (2) If subsequent additions are to be made to the trust corpus with funds not belonging to the trust beneficiary, it shall be understood that those funds are a gift to the trust beneficiary and cannot be reclaimed by the donor.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- vi. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State's right to reimbursement or to recoup incorrectly paid benefits.

*Paragraph 9 of the Trust protects T.L. from creditors, but there is no language describing the right of the State with respect to benefits paid to T.L.*

- vii. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary, or by a court.

*The Trust was established by T.L.'s mother; petitioner argues that the T.L. Trust was established by E.M.L. on the same date as she established the Trust. There is no separate T.L. Trust document to use to confirm the date it was established.*

- (1) The trust shall identify the grantor/settlor by name and as the parent, grandparent, legal guardian, or court. A court can be named as the grantor, if the trust is established pursuant to a settlement of a case before it, or if the court is otherwise involved in the creation of the trust.

*The Trust was established by T.L.'s mother; petitioner argues that the T.L. Trust was also established by E.M.L. but there is no separate T.L. Trust document to use to confirm its establishment by E.M.L.*

- viii. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime.

*By its terms and title, the Trust is revocable. See R-3 at 1. There is language in the Trust that arguably creates irrevocable trusts on the death of E.M.L., including the T.L. Trust. Id. at 2–3. Though there is no specific statement that it is irrevocable, respondent appears to accept that characterization. See Ltr. Br. of Resp't (Nov. 25, 2025), at 2.*

- ix. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event

that any trustee is unable or unwilling to serve. The Bureau of Administrative Control, Division of Medical Assistance and Health Services, as well as the trust beneficiary and/or guardian, shall be given prior notice if there is a change in the trustee.

*J.L. is named as trustee, but her address is not included. R-3, ¶ 12(B).*

- x. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- xi. Except as approved by court order, after notice to the Division of Medical Assistance and Health Services, individual trustee fees shall be in accordance with N.J.S.A. 3B:18-23 et seq. or, in the case of a corporate trustee, the corporate trustee's regular fee schedule. The trustee shall not delay or defer accepting compensation or commissions more than one year from the date(s) they would otherwise be payable under the terms of the trust or of any applicable statute or rule. If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law. The parent of a minor child shall not be compensated from the trust as the child's guardian.

*The Trust does not include trustee fees; there is no T.L. Trust document to review.*

- (1) If an adult beneficiary is not competent, the trust shall specifically state that the "guardianship protections for the incompetent's funds which are required by New Jersey law and Court rules are incorporated by reference into this trust." The trustee shall either file a bond or shall get the Court's permission not to do so.

*There is no evidence that T.L. is not competent.*

- xii. The trust shall specifically state that, upon the death of the primary beneficiary, the State will be notified, and shall be paid all amounts remaining in the trust up to the total value of all medical assistance paid on behalf of the beneficiary. The trust shall comply fully with this obligation under the statute to first repay the State, without requiring the State to take any action except to establish the amount to be repaid. Repayment shall be made to the Treasurer, State of New Jersey, and shall be sent to the Division of Medical Assistance and Health Services, to the attention of the Bureau of Administrative Control, PO Box 712, Trenton, New Jersey 08625-0712, or to any successor agency.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- xiii. If there is a provision for repayment of other assistance programs, the trust shall specifically state that the Medicaid Program shall be repaid prior to making repayment to any other assistance programs.

*There is no such provision in the Trust; there is no T.L. Trust document to review.*

- xiv. The trust shall specifically state that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If there is an insufficient amount left to cover all benefits paid, then each state shall be paid its proportionate share of the amount left in the trust, based upon the amount of support provided to the beneficiary.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- xv. No provisions in the trust shall permit the estate's representative to first repay other persons or creditors at the death of the beneficiary. Only what remains in the trust after the repayments specified in (g)1xii, xiii and xiv above have been made shall be considered available for other expenses or beneficiaries of the estate. The trust may provide for a prepaid burial plan,

but shall not state that it will pay for reasonable burial expenses after the death of the trust beneficiary.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- xvi. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the appropriate eligibility determination agency on an annual basis.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- xvii. The State shall be given advance notice of any expenditure in excess of \$ 5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Division of Medical Assistance and Health Services, Bureau of Administrative Control, PO Box 712, Mail Code 6, Trenton, New Jersey 08625-0712, or any successor agency, 45 days prior to the expenditures.

*This language is not included in the Trust; there is no T.L. Trust document to review.*

- xviii. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

*The Trust provides for remainder beneficiaries upon the death of T.L. R-3, ¶ 5(B)(1)(c). There is no T.L. Trust document to review.*

Based on the above, I **CONCLUDE** that neither the Trust established by E.M.L. in 2003, nor the T.L. Trust, which became effective in 2017, satisfy the criteria required under New Jersey law for special needs trusts. Therefore, I **CONCLUDE** that the T.L. Trust may

not be excluded as an inaccessible resource under N.J.A.C. 10:71-4.4(b)(6)(i). Respondent correctly included the accounts owned by the T.L. Trust as resources available to T.L. and found him to be ineligible for Medicaid benefits.

The rule governing special needs trusts was adopted in 2001, prior to 2003, when E.M.L. established the Trust. Subsection (g), which is quoted above, was rewritten in 2012, five years before E.M.L.'s death in 2017. As was made clear during discussions with the parties, E.M.L.—and J.L., after her mother's death—relied on counsel in the establishment and administration of the Trust and the T.L. Trust. Unfortunately, for reasons not known, separate trust documents were not prepared to benefit T.L. and M.L. and the Trust was not amended to conform to the requirements of the new regulation, as was anticipated and permitted under N.J.A.C. 10:71-4.11(g)(1)(i)(1).

It is not too late for J.L. to set up a new special needs trust for T.L. as he is not yet sixty-five years old.<sup>4</sup> It is recommended that she do so in conformity with the regulations cited here.

I **CONCLUDE** that petitioner has not proved by a preponderance of the credible evidence that respondent erred in its decision to deny his application for Medicaid benefits on the grounds that his resources exceed the eligibility limit.

### **ORDER**

For the reasons described above, it is hereby **ORDERED** that respondent's denial of petitioner T.L.'s application for Medicaid benefits is **AFFIRMED**, and petitioner's appeal is hereby **DISMISSED**.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. §

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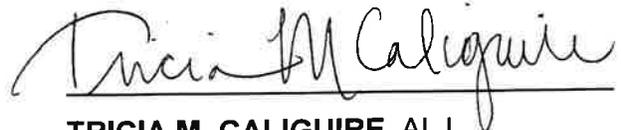
<sup>4</sup> If J.L. is not T.L.'s legal guardian, the regulation permits a special needs trust to be established for a disabled individual by a court. N.J.A.C. 10:71-4.11(g)(1).

1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

December 9, 2025

DATE

  
\_\_\_\_\_  
**TRICIA M. CALIGUIRE, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

TMC/sw/kl

**APPENDIX**

**Exhibits**

**For Petitioner:**

- Ex. A Certificate of Death of E.M.L., dated February 6, 2017
- Ex. B [E.M.L.] Revocable Trust, dated July 9, 2003 (not all pages included)
- Ex. C Ameriprise Financial Tax Document for [L.] Trust FBO [T.L.], page 1/28, undated; and PNC Bank Checking Account statement cover page, dated October 7, 2025
- Ex. D Letter from J.L. to Respondent, dated February 10, 2025

**For Respondent:**

- R-1 Application for NJ FamilyCare Aged, Blind, Disabled Programs, dated April 19, 2025
- R-2 Notice of Adverse Action, dated May 29, 2025
- R-3 [E.M.L.] Revocable Trust, dated July 9, 2003 (all pages)
- R-4 Ameriprise Financial Statement, dated February 28, 2025
- R-5 PNC Bank Checking Statement, dated April 7, 2025