



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

J.S.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	ORDER OF REMAND
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 11618-2013
AND HEALTH SERVICES AND	:	
CAMDEN COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents in evidence. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is August 21, 2014, in accordance with and Order of Extension.

This matter concerns a trust Petitioner established in 2005 with the proceeds of a life insurance policy and her home. Her daughter is the trustee and Petitioner is entitled to the income from the trust. Petitioner applied for nursing home benefits in November 2012. Camden County denied her application due to excess resources by finding that the trust was revocable as the corpus of the trust was used to pay for Petitioner's care.

The Initial Decision found that due to the terms of the trust, the trust was not revocable and should not be included in determining Petitioner's Medicaid eligibility. The decision states that the trust would be treated as a transfer of assets but because it was established and funded more than five years prior to the application, no penalty can be assessed. However, the record before me indicates that Petitioner placed funds into the trust during the look back period which causes a penalty period. There is also a document that shows in 2012 Petitioner was able to sign checks drawn from the trust account that would make the trust corpus available to her.

Petitioner wrote a check for \$6,000 on March 7, 2012 from her personal account to the S. Income Only Trust with notation "repay trust". R-1 at 44. The record contains no explanation how that amount was reached. Moreover, the checks written by the trustee for Petitioner's nursing home amount to \$5,310 and were written in 2007 and 2008 some four years before the "repayment" check prior March 2012. (ID at 2). Without any legal requirement that Petitioner owed that amount to the trust, the transfer was for less than fair market value and I FIND the transfer of \$6,000 to the trust is a penalty.

In Mistrick v. Div. of Med. Assistance & Health Servs., 154 N.J. 158, 712 A.2d 188, 198 (N.J. 1998), the New Jersey Supreme Court held that an applicant arguing that an asset is an unavailable resource has the burden of proving its unavailability. Petitioner claims that the trust document signed in 2005 rendered the trust assets unavailable as the assets were moved outside her control.

However, the record contains a check written by Petitioner from the S. Income Only Trust account on October 21, 2012 to Eagleswood Township. R-1 at 40. Although Petitioner's daughter, who also is the trustee, argues that the trust was irrevocable and Petitioner had no access to the trust funds, that check is signed by J.S. herself. If Petitioner had no control over the trust funds, how is she able to issue checks from the trust account? If she had access to the trust account by having the authority to write checks, the funds were available to her. If Petitioner subsequently gave up that right and it was done in the look back period, this constitutes a transfer of assets that is subject to a penalty. Thus, I hereby REVERSE the Initial Decision and REMAND the matter back to OAL for further findings specific to Petitioner's right to draw funds from the trust account. Such findings should include a review of the signature card on the trust account and any changes to the authority to access any trust account during the look back period.

THEREFORE, it is on this 19th day of AUGUST 2014

ORDERED:

That the Initial Decision is hereby REVERSED;

That, at minimum, Petitioner is subject to a penalty of \$6,000; and

That the matter is hereby REMANDED to the Office of Administrative Law for further findings related to Petitioner's ability to access the trust funds including writing checks from the trust account.

A handwritten signature in black ink, appearing to read "Valerie Harr", written over a horizontal line.

Valerie Harr, Director
Division of Medical Assistance
and Health Services