

of Petitioner and Trustee of Petitioner's Trust (Trustee). The Burlington County Board of Social Services (BCBSS) determined that the payments made to the Trustee were above fair market value, resulting in a penalty period. The BCBSS then determined that the Trustee's services were comparable to a bookkeeper and therefore worth \$50.00 an hour. Basing the trustee's commissions on \$50 per hour, the BCBSS concluded the Trustee should have been paid \$12,500.00, rather than \$50,000.00, thus reducing the total penalty period to \$37,500.00. The Administrative Law Judge (ALJ) rightly concluded that the BCBSS's valuation of the trustee services, was arbitrary and capricious. Since the BCBSS did not provide support for the reduction of the trustee fees, the ALJ concluded that the trustee was entitled to reasonable compensation so there was no improper transfer. As a result, The ALJ reversed the agency determination.

However, trustee fees/commissions are statutorily determined according to N.J.A.C. 3B:18-24 and 25. Pursuant to these statutory provisions, "[c]ommissions in the amount of 6% may be taken without court allowance on all income received by the fiduciary."

Moreover, 3B:18-25, authorizes fiduciaries to take,

annual commissions on the [trust] corpus (including accumulated income which has been invested by the fiduciary) in the amount of \$5.00 per thousand dollars of corpus value on the first \$400,000.00 of value of corpus and \$3.00 per thousand dollars of the corpus value in excess of \$400,000.00.

Thus, the commission is not a flat fee as calculated by the Trustee or by the BCBSS. The fee must be determined based on the total amount of income brought into the trust and the total value of the trust annually. Since the BCBSS did not calculate the trustee commissions in conjunction with the statutory breakdown, it is impossible to determine whether the Trustee commissions were fair market value.

To that end, I hereby REVERSE the Initial Decision. Without an accurate determination of the trustee fees, it not possible to say whether Petitioner received fair market

value. As such I RETURN this matter to BCBSS to calculate the appropriate trustee fees.
BCBSS shall reissue a notice setting forth that penalty and take appropriate action.

THEREFORE, it is on this 14th day of JUNE 2023,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is RETURNED to Burlington County for further review and
action as set forth above.



Jennifer Langer Jacobs

Assistant Commissioner
Division of Medical Assistance and
Health Services