



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Acting Commissioner

KIM GUADAGNO
Lt. Governor

VALERIE HARR
Director

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

L.L.,
PETITIONER,
V.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES
AND OCEAN COUNTY BOARD
OF SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 3611-14

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. No exceptions were filed.

Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 8, 2015, in accordance with N.J.S.A. 52:14B-10 which requires

an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision in this case was received on July 22, 2015.

Based upon my reviews of the record, I hereby ADOPT the findings, conclusions and recommended decision of the Administrative Law Judge in their entirety and incorporate the same herein by reference.

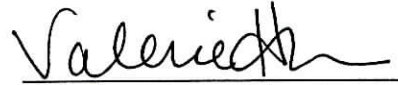
The federal law instructs states to disregard the purposes for which the trust is established, whether the trustees have any discretion under the trust, whether there are restrictions on the distributions from the trust or any restrictions on the use of the distributions. 42 U.S.C. 1396p(d). Instead the state should look at the actual language of the trust to determine how the trust is to be treated in determining Medicaid eligibility. If there is any circumstance under which payment from the trust could be made to or for the benefits of the individual, "the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual." 42 U.S.C. 1396p(d)(3)(B)(i). Further, "any amount in a trust for which payment can be made, no matter how unlikely the circumstances of payment might be or how distant in the future, shall be considered a payment that can be made under some circumstances." N.J.A.C. 10:71-4.11(e)(5).

Here, Section 3(s) of the Trust permits the trustee at his discretion "to distribute to the Grantor, upon her demand, any or all assets herein, provided, such Grantor is able to and replaces the value of such assets in this trust within twenty-four hours of such withdrawal." Accordingly, the ALJ correctly concluded that Section 3(s) of the Trust renders the corpus of the Trust an available resource for Petitioner and to the extent the corpus exceeds \$2,000, petitioner is ineligible for Medicaid benefits.

THEREFORE, it is on this *2nd* day of SEPTEMBER 2015,

ORDERED:

That the recommended decision affirming that the Trust is available to Petitioner and must be used to determine Medicaid eligibility is hereby ADOPTED.



Valarie J. Harr, Director
Division of Medical Assistance
and Health Services