

transfers to the trust from the five-year lookback period. Monmouth County contends Petitioner has access to the funds due to language that permitted her to have funds returned to her without approval or consent so long as she substituted other property of equal value. While that provision could affect eligibility if other assets were in the trust, here, Petitioner has only transferred her home to the trust. Petitioner cannot reacquire the property without approval or consent due to rules surrounding the transfer of property. See N.J.S.A. 46:2A-5.

As the trust was established with Petitioner's assets, Medicaid analyzes the terms of the trust under both the asset availability rules and the transfer of asset rules. Federal law specifically provides:

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

....

(C) Subject to paragraph (4) [about special needs trusts], **this subsection shall apply without regard to--(i) the purposes for which a trust is established, (ii) whether the trustees have or exercise any discretion under the trust, (iii) any restrictions on when or whether distributions may be made from the trust, or (iv) any restrictions on the use of distributions from the trust.**

....

(3)(B) In the case of an irrevocable trust--

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit 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, (and payments from that portion of the corpus or income—

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c); and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the

trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c), and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

[42 U.S.C. §1396p(d) (emphasis added).]

The State Medicaid Manual (Transmittal 64) expands on the statute by stating that “where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust . . . [[p]ayments from income for from the corpus made to or for the benefit of the individual are treated as income to the individual [and the] [i]ncome on the corpus which could be paid to or for the benefit of the individual is treat as a resource available to the individual.” SMM § 3259.6.B. If the income is paid but was not for the benefit of the individual, that payment is a transfer or assets for less than fair market value and subject to penalty.

Here, Petitioner sought to foreclose any assets placed in the trust. Her home was transferred into the trust in 2012 while she retained a limited life estate. P-2. Her obligations were severely limited to taxes and maintenance of the property during her use and occupancy. It is unclear when she left the home.

Based on my review of the record, I FIND that Petitioner was incorrectly denied Medicaid based solely on the trust language. Setting up the trust in 2012, Petitioner had engaged in Medicaid planning for just over five years before applying for benefits. Any transfers would need to occur within five years of the Medicaid application to impose a penalty. N.J.A.C. 10:71-4.10 and -4.11. See also 42 U.S.C. §1396p(c)(1)(A). According to Petitioner, the sole transfer to the trust was the home

Thus, I REVERSE the Initial Decision as to the finding that Petitioner’s home owned by the trust is available to her. However, the record does not indicate that Monmouth County completed the eligibility determination for Petitioner regarding other

standards. As such, the matter should be returned to Monmouth County to determine if Petitioner established eligibility or if there were transfers of assets.

THEREFORE, it is on this ^{25th} day of JUNE 2018,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is RETURNED to Monmouth County for further action on Petitioner's application.



Meghan Davey, Director
Division of Medical Assistance
and Health Services