

owner of Petitioner's New Jersey property. E.B. v. Morris County and DMAHS, OAL Dkt. HMA 14388-2016. During that review it was discovered that Petitioner owned a property in Florida that was transferred to the trust in July of 2015. The trust was set up in 2010 by Petitioner and her husband. Neither the trust nor the Florida property were disclosed on the initial application which the prior matter found was completed by Petitioner's husband and his current counsel. P-1.

By letter dated April 6, 2017 Morris County sought a copy of the trust, all bank accounts related to the trust, a copy of the deed for the Florida property and information regard another trust to be provided within 10 days of the letter. Petitioner's husband did not respond until June 1, 2017 with a partial copy of the trust document and a statement that there was no Schedule A or bank accounts related to the trust. He also provided information regarding the mortgage on the Florida property and a letter from a realtor about the 2013 listing for the property. By that time Morris County had already issued the termination of benefits for failure to provide documentation.

The Initial Decision upheld the termination and I concur with that recommendation. The 2010 trust names Petitioner and her husband as grantors. It appears that one page is missing in the middle and there is no signature page which raises questions if there are additional missing pages that precede the signatures. This was addressed in Morris County's letter of July 7, 2017 to Petitioner's counsel but it was not corrected at the fair hearing.

Despite being a grantor trust, Petitioner and her husband have provided no information about the Schedule A referenced in the trust or other transfers they have made to the trust. The couple had previously transferred their marital New Jersey home into the trust in 2010. However, when applying for Medicaid, the trust returned the property to them so Petitioner's husband could use it for shelter costs under Medicaid rules. This return of the property was done despite the explicit language in the trust that the grantors cannot

reacquire any trust property. Article 2.3.E. As such, the terms of trust do not appear to be followed by the trustees, who are Petitioner's son and daughter-in-law.

As noted by the Initial Decision, as trustee, Petitioner's son could have provided information regarding the trust transactions and the sale of the Florida property. ID at 9, Fn. 11. Neither he nor Petitioner's husband testified at the hearing. Rather Petitioner presented a letter from the Florida relator which was not notarized and was not corroborated by any legally competent evidence. P-7. That letter described the actions of Petitioner's son as listing the Florida property for \$750,000 as a "lark" and then rejecting "multiple offers" from the eventual buyer² until it was sold for \$850,000. Petitioner transferred the Florida property to the trust in July 23, 2015 and the property settled on December 30, 2015. In the span of those five months, Petitioner's son was able to list the property, reject multiple offers and finally sell the property for \$100,000 over the asking price and for over \$300,000 more than its last listed price.

Petitioner filed two letters of exceptions. The first one dated January 11, 2018 addressed the Initial Decision. The second one dated January 16, 2018 is a "follow up" and provides an appraisal of the Florida property done on January 15, 2018. N.J.A.C. 1:1-18.4(c) states "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referenced within exceptions." As such the January 16, 2018 exceptions were not considered and are not part of the record.

Petitioner has still not explained the holdings of the Family Trust. Petitioner failed to disclose the trust prior to its appearance in documents at the previous fair hearing and did not disclose ownership of the Florida property until asked. Petitioner's son, as trustee, would be in the best position to explain what assets have been transferred into the trust and the circumstances regarding the Florida property. Yet, Petitioner failed to produce him at the hearing. Rather Petitioner's evidence regarding the Florida property was two

² The eventual buyer was a trust established on December 23, 2015. P-16.

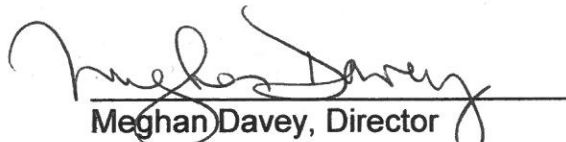
hearsay documents by a relator who listed the property in 2012. The documents were offered as an expert opinion without any opportunity to voir dire the individual or to cross-examine him. Those documents only indicate he had personal knowledge of the 2012 listing. Thus, I find them to be unreliable, and they cannot be used to support any findings regarding the 2015 events.

The Initial Decision's finding about Petitioner's arguments on the transfer of the property and its effect on imposing a transfer penalty were properly rejected as Morris County did not impose a transfer penalty. The case was terminated for failure to provide information as Petitioner's eligibility could not be established. Should Petitioner wish to reapply, she will need to answer the questions about the 2010 trust, its ability to transfer assets back to Petitioner and her husband, and the Florida property.

THEREFORE, it is on this 4th day of APRIL 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services