



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 09774-24
AGENCY DKT. NO. N/A

C.S.,

Petitioner,

v.

**MIDDLESEX COUNTY BOARD OF
SOCIAL SERVICES,**

Respondent.

Emily Schurr, Esq., for petitioner (Begley Law Group, attorneys)

Kurt Eichenlaub, Human Services Specialist 3, for respondent, pursuant to
N.J.A.C. 1:1-5.4(a)(3)

Record Closed: August 15, 2024

Decided: September 4, 2024

BEFORE ALLISON FRIEDMAN, ALJ:

STATEMENT OF THE CASE

C.S., a forty-five-year-old, disabled woman, is the beneficiary of a Special Needs Trust, which mandates reimbursement to the State before disbursement of funds. Is the trust a countable resource for determining Medicaid eligibility for C.S.? No. Under 42 U.S.C. 1396p(d)(4), a Special Needs Trust that is created for a disabled beneficiary who

is under the age of sixty-five and mandates reimbursement to the State before disbursement of funds shall not be a countable resource for Medicaid eligibility.

PROCEDURAL HISTORY

In July 2001, C.S.'s mother petitioned the Superior Court of New Jersey for guardianship of C.S.

On July 29, 2011, a Special Needs Trust was approved by the New Jersey Superior Court with C.S.'s mother and another appointed as guardians.

On February 10, 2012, guardianship of C.S. was awarded to Planned Lifetime Assistance Network of New Jersey (PLAN/NJ).

On February 27, 2024, PLAN/NJ filed on C.S.'s behalf a re-certification application to continue benefits in the Managed Long-Term Services and Supports program (MLTSS) with Middlesex County Board of Social Services.

On June 18, 2024, PLAN/NJ Middlesex County Board of Social Services notified C.S. that her benefits would terminate on June 30, 2024, because she was over resources.

PLAN/NJ, guardian of C.S., timely requested a fair hearing.

On July 22, 2024, the Division of Medical Assistance and Health Services (DMAHS) transmitted the case to the Office of Administrative Law, where it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On August 14, 2024, I held a hearing, and on August 15, 2024, I closed the record after confirming no closing briefs would be filed.

FINDINGS OF FACT

Based upon the testimony and exhibits, I **FIND** the following facts:

C.S., affected by severe muscular dystrophy, was declared incompetent in 2001, and her mother and Ms. L. (relationship to C.S. is unknown) were awarded guardianship. (P-1.) In 2004, C.S.'s mother passed away, Ms. L. became the sole guardian, and a sizable inheritance was placed with Mercer County Surrogate until 2011, when Ms. L. hired counsel for the purpose of establishing a "Special Needs Trust" (Trust) for the benefit of C.S. In 2011, the inheritance passed to C.S. This Trust was specifically set up to ensure any costs not covered by MLTSS that enrich and support C.S.'s medical and mental health needs would be covered while maintaining her eligibility for Medicaid. (J-1.) On July 29, 2011, the Trust was approved by the Superior Court with a value more than \$300,000. (P-2.) On February 10, 2012, guardianship of C.S. was transferred to PLAN/NJ. (P-1.)

C.S. is now forty-five years old and profoundly disabled. She continues to suffer from muscular dystrophy and is wholly dependent on a ventilator twenty-four hours a day, seven days a week. C.S. is non-ambulatory and communicates with only facial expressions. C.S. is clinically eligible for MLTSS. PLAN/NJ continues to have guardianship and is trustee, payee, and guardian of the Trust. (P-1.) C.S. has been receiving Medicare Part A benefits since June 1, 2001, and Medicare Part B since July 1, 2014. The Trust has never been counted as a resource under Medicaid since its creation. (R-A.)

C.S. received Medicaid through the Department of Developmental Disabilities (DDD) prior to the establishment of the Trust and until her medical needs required a higher level of care than DDD or The Arc of Middlesex County housing, where she was residing, could provide. C.S. then moved to the benefit program MLTSS for proper medical care coverage.

The Trust has been used solely to pay for items and services that have a positive impact on C.S.'s quality of life, such as a computerized communication device that allows C.S. to communicate beyond her facial expressions. (P-8.)

DISCUSSIONS AND CONCLUSIONS OF LAW

Medicaid is a federal program that states do not have to enroll in; however, if the state does opt to enroll in the program, the state must adhere to the federal regulations that define the eligibility of the program. 42 U.S.C. section 1396 et seq.; see also, Harris v. McRae, 448 U.S. 297, 301 1980. New Jersey has opted into the Medicaid program. Therefore, the federal statutes that govern the program control.

The legal issue presented here involves one federal and one state statute. Specifically, the federal statute, 42 U.S.C. section 1396p(d)(4)(A), instructs that trusts that satisfy the following elements are NOT to be counted as a resource for Medicaid eligibility purposes. The state statute, N.J.A.C. 10:71-4.11(g) instructs a trust shall be a countable resource if it creates a will.

C.S.'s Trust complies with the requirements of the federal statute because it was approved by the New Jersey Superior Court. C.S.'s Trust satisfies the requirements of the federal statute. Specifically, C.S. is under the age of sixty-five, she is disabled, the Trust only benefits C.S., and the State shall be reimbursed upon the passing of C.S. Specifically, Section 2.7.3 designates the "Trust shall receive all monies and assets remaining in the trust upon death of C.S. . . . up to an amount equal to the total medical assistance paid on behalf of C.S." (J-1 at 11.)

Mr. Kurt Eichenlaub, Human Services Specialist 3, clarified that the recertification was the first time Middlesex considered C.S.'s eligibility. Despite not being counted as a resource in the past, Middlesex found the Trust to be in violation of N.J.A.C. 10:71-4.11(g), and therefore, the Trust was counted as a resource.

Middlesex argues that the Trust may comply with the federal statute, but paragraph 2.7.4.2 violates N.J.A.C. 10:71-4.11(g), removing the Trust from the waiver granted under

the federal law. Specifically, N.J.A.C. 10:71-4.11(g)(1)(xviii) does not allow “a trust to create a will for an incompetent or a minor[;]” the “additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.” Ibid.

Paragraph 2.7.4.2 of the Trust is under the section of Post-Payback Distribution with the subheading of the power of appointment. This clause reserves C.S.’s right to create a will provided two conditions are satisfied. First, C.S. must be competent, and second, the State must be reimbursed:

. . . Trustee shall distribute the remaining trust Estate to such persons, in such amounts, and upon such items, Trusts, and conditions as C.S. (assuming C.S. has been adjudicated to have the capacity prior to the termination of the Trust) shall appoint under the terms of her Last Will and Testament . . . However, this power of appointment shall not be exercisable in favor of the Beneficiary, the Beneficiary’s estate, the Beneficiary’s creditors, or the creditors of the Beneficiary’s estate.

[J-1 at 12.]

The language of the Trust has not been changed since its approval as a Special Needs Trust by the Superior Court in 2011. Despite Middlesex’s arguments, this clause does not create a will. It reserves the right to. Additionally, the language specifically prioritizes the reimbursement of the State before any funds of the Trust can be distributed, in compliance with the controlling federal statute.

I **CONCLUDE** that the federal statute defining Medicaid waivers is the controlling law to be applied. I also **CONCLUDE** that the Trust does not violate the New Jersey Administrative Code because the language of the Trust does not create a will.

ORDER


Given my findings of fact and conclusions of law, I **ORDER** that C.S.’s MLTSS benefits **CONTINUE**.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

September 4, 2024

DATE


ALLISON FRIEDMAN, ALJ

Date Received at Agency:

Date E-Mailed to Parties:

AF/cb

APPENDIX

Witnesses

For Petitioner:

Melanie Mills-Miquel, Social Services Manager at PLAN/NJ
Nancy Dilliplane, Director of Trust Servies of PLAN/NJ

For Respondent:

Kurt Eichenlaub, Human Services Specialist 3

Exhibits

Joint:

- J-1 Trust Documents
- J-2 Adverse action letter and calculations (P-4 and R-B)

For Petitioner:

- P-1 Letters of Guardianship detailing C.S.'s history of incapacity
- P-2 Court Order Approving Establishment of Special Needs Trust, dated July 29, 2011 (2-5)
- P-4 Medicaid Termination Notice, dated June 18, 2024 (35-40)
- P-5 Emails from Kyle J. Trent, counsel to Middlesex County Board of Social Services (41-43)
- P-7 HCFA Transmittal 64, Section 3257 (52-56)
- P-8 Representative Payee Account Report and Guardianship Account, dated July 31, 2024

For Respondent:

- R-A Application 2-27-24 (1-28)
- R-B Eligibility letter with citations and resource calculation (29-36)
- R-C N.J.A.C. 10:71-4.11 (e)(2); 10:71-4.11(g); 10:71-4.11(g)(1)(xviii) (37-46)

R-E Bank of America account ending #6332; Merrill Lynch accounts ending #0040 and #0044 (77-88)