



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 13405-23

J.L.
Petitioner,
v.
OCEAN COUNTY
Board of Social Services
Respondent.

Medicaid Only
Excess Resources Appeal
N.J.A.C. 10:71-4

STATEMENT OF THE CASE

Respondent denied petitioner's Medicaid Only application due to excess resources under N.J.A.C. 10:71-4.5.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

- I **FIND** that petitioner or petitioner's representative is **AUTHORIZED** to pursue this appeal; therefore, I **CONCLUDE** that standing has been established.
- I **FIND** that petitioner or petitioner's representative is **NOT AUTHORIZED** to pursue this appeal; therefore, I **CONCLUDE** that standing has not been established.

II.

I **FIND** that petitioner's **available and countable resources** total \$ _____ (N.J.A.C. 10:71-4.1, -4.2; see also N.J.A.C. 10:71-4.6 and -4.8 for married individuals). The applicable **resource eligibility standard** is \$ _____ (N.J.A.C. 10:71-4.5). Petitioner's **date of resource eligibility** is _____ (N.J.A.C. 10:71-4.5) (fill in if resources under applicable standard).

III.

I **CONCLUDE** that petitioner is over the applicable resource limit and is therefore resource **INELIGIBLE** for Medicaid Only benefits under N.J.A.C. 10:71-4.5.

I **CONCLUDE** that petitioner is not over the applicable resource limit and is therefore resource **ELIGIBLE** for Medicaid Only benefits as of _____ (fill in date of eligibility) under N.J.A.C. 10:71-4.5.

ADDITIONAL FINDINGS OF FACT/CONCLUSIONS OF LAW

Michael E. Weintraub, Esq., as J.L.'s Designated Authorized Representative (DAR), filed a Medicaid application on J.L.'s behalf on or about August 16, 2023. On November 1, 2023, J.L.'s Medicaid application was denied by respondent for J.L. being over the resource limit of \$2,000 for an individual. On December 5, 2023, an appeal from that denial was filed by the DAR with the Office of Administrative Law. On March 5, 2024, J.L. passed away. The resource issue was briefed, but neither party addressed J.L.'s death. At the commencement of the March 28, 2024 telephonic hearing, Weintraub conceded, and the Board agreed, that Weintraub, as the previously designated DAR, had no standing to pursue the appeal and argue the merits of the case, because 42 C.F.R. 435.923(c) provides that a DAR appointment terminates when "there is a change in the legal authority upon which [it] is based." Weintraub's DAR status terminated upon J.L.'s death, and no estate was established or contemplated for J.L. See N.B. v. Monmouth County Div. of Soc. Servs., 2022 N.J. AGEN LEXIS 398, HMA 00702-21, Final Decision (May 9, 2022), <https://njlaw.rutgers.edu/collections/oal/final/hma00702-21_1.pdf> (concluding and compiling cases where death of petitioner terminated DAR appointment).

ORDER

I **ORDER** that:

- Petitioner's appeal is **DISMISSED** because petitioner has no standing.
- Petitioner is resource **INELIGIBLE** for Medicaid Only benefits under N.J.A.C. 10:71-4.5.
- Petitioner is resource **ELIGIBLE** for Medicaid Only benefits as of _____ under N.J.A.C. 10:71-4.5.

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.

04/16/2024

DATE

Sarah H. Sargent

SARAH H. SURGENT

, ALJ

Date Record Closed:

03/28/2024

Date Filed with Agency:

04/16/2024

Date Sent to Parties:

04/16/2024

APPENDIX

Witnesses

For Petitioner:

None

For Respondent:

Kaila Reilly, Human Services Specialist 3

Exhibits

For Petitioner:

- P-1 Josephine Listro 2018 Irrevocable Trust
 - P-2 Edward Jones ****128-1-0 initial statement, dated April 28 to May 25, 2018
 - P-3 Promissory Note, dated May 21, 2020
 - P-4 Modification to Promissory Note, effective February 25, 2021
 - P-5 Modification to Promissory Note, effective November 2, 2021
 - P-6 Modification to Promissory Note, effective May 11, 2022
 - P-7 Modification to Promissory Note, effective November 16, 2022
 - P-8 N.J.A.C. 10:71-4.11
 - P-9 M.K. v. Morris County Bd. of Soc. Servs., HMA-05523-17, Initial Decision
 - P-10 M.K. v. Morris County Bd. of Soc. Servs., HMA-05523-17, Final Decision
 - P-11 C.F. v. Hudson County Dept. of Family Servs., HMA-11517-17, Initial Decision
- (see attached continuation page for exhibits P-12 through P-17)

For Respondent:

- R-1 NJFC Aged, Blind, Disabled Medicaid application, dated August 16, 2023
- R-2 Request for information letters, dated August 28, 2023 and October 6, 2023
- R-3 Notification of ineligibility with resource calculations, dated November 1, 2023
- R-4 Letters from Weintraub, dated August 15, 2023 through October 18, 2023
- R-5 Documents pertaining to third-party trust
- R-6 Edward Jones statement, Venerable contact value, and Santander statement
- R-7 N.J.A.C. 10:71-4.1(c)1.; 10:71-4.2 (a); 10:71-4.4(b)6;
10:71-4.11(c)2.; 10:71-4.11(e)2.iii; 10:71-4.11(e)5
- R-8 Venerable statement, dated September 8, 2023

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Petitioner's Exhibits (continued from prior page)

- P-12 J.S. v. Camden County Bd. of Soc. Servs. & DMAHS, HMA-11618-13, Initial Decision
- P-13 Venerable statement, dated September 5, 2023
- P-14 Venerable statement, dated September 8, 2023
- P-15 Venerable letter, dated January 31, 2024
- P-16 Venerable letter, dated September 6, 2023
- P-17 Venerable letter, dated March 5, 2024