



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 08348-24

E.C.

Petitioner,

v.

BURLINGTON 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 \$1,718.13 (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 \$2,000 (N.J.A.C. 10:71-4.5). Petitioner's **date of resource eligibility** is 11/01/2023 (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 11/01/2023 (fill in date of eligibility) under N.J.A.C. 10:71-4.5.

ADDITIONAL FINDINGS OF FACT/CONCLUSIONS OF LAW

Petitioner E.C. applied for Medicaid on November 30, 2023. Petitioner created the E.M.C. Grantor Trust on February 2, 2017 (Trust). (P-1) This is an irrevocable trust. The Trust opened a TD Bank account ending in 0810 on March 22, 2017. (P-6.) In August 2018, the trust was fully funded. (P-7.) On September 16, 2022, the trust transferred \$20,000 into the TD Bank account ending in 0810. This respondent BCBSS alleges invalidates the trust. Respondent further alleges, because of that transfer, the assets of the trust were available to E.C. I disagree. Treatment of trusts for purposes of determining resource eligibility is dependent on the characteristics of the trust. N.J.A.C. 10:71-4.11(e). I **CONCLUDE** that the "E.M.C. Grantor Trust" is an irrevocable trust, per the provisions of Section 1.03. "In order to be considered in the determination of eligibility, a resource must be available." N.J.A.C. 10:71-4.1(c). Resources are available to an individual when the person has the right, authority, or power to liquidate real or personal property, or his or her share of it, or the resources have been deemed available to the applicant. N.J.A.C. 10:71-4.1(c)(1), (2). Certain resources are excludable as a matter of law such as "resources which are not accessible to an individual through no fault of his or her own." N.J.A.C. 10:71-4.4(b)(6). An irrevocable

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 11/01/2023 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.


01/27/2025

DATE

Date Record Closed:

Date Filed with Agency:

Date Sent to Parties:



JOAN M. BURKE

, ALJ

01/21/2025

APPENDIX

Witnesses

For Petitioner:

NONE

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For Respondent:

Brandon Carr, Human Service Specialist 3

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Exhibits

For Petitioner:

P-1 The E. M. C. Grantor Trust, February 2, 2017

P-2 NJ FamilyCare Confirmation , November 30, 2023

P-3, Denial of Application, May 14, 2024

P-4 TD Bank Statement, October 2023

P-5 Variable Annuity Quarterly Statement, June 29, 2018

P-6 TD Bank Statement March 26, 2017 - April 26, 2017

P-7 Baird Account Summary, August 2018

P-8 Certificate of Death, September 5, 2024

P-9 Burlington County Surrogate Court Executive Short Certificate, October 9, 2024

Petitioner's Brief, November 11, 2024

For Respondent:

Respondent's Fair Hearing Submission, with Brief and Exhibits, 129 pages

Continuation of E.C. v. BCBSS

trust is one example of an excludable resource. N.J.A.C. 10:71-4.4(b)(6)(i). In this case, E.C. is not a beneficiary of the Trust, and neither is she a trustee. According to petitioner¹, "During her lifetime, her Trustee shall make distributions only as authorized in Article Five; specifically, only to the lifetime beneficiary of the Trust, which is her brother . . . Following her death, her Trust is to be administered according to the provisions of Article 6." (Petitioner's Brief, November 11, 2024.) Article 6 of the Trust provides as follows: "My Trustee shall administer the remaining trust property as provided in this Article. My Trustee shall administer the remaining trust property for the benefit of Steve J. Griszbacher as provided in this Article. . . ." (See P-1.)

I therefore **CONCLUDE** that the Trust is an irrevocable trust. In reading the clear language of the Trust, along with the restrictions, the petitioner is not able to receive payments "directly or otherwise under any circumstances." (Petitioner's Brief, November 11, 2024).

Through no fault of her own, on September 16, 2022, an amount of \$20,000 was transferred from the T.D.'s Grantor's Trust to a T.D. checking account ending in 0810. (P-7.) The respondent on May 14, 2024, denied the petitioner's November 30, 2023 NJ FamilyCare application. The basis for denial was total countable resource of \$367,755.95 which is over the program's resource limit of \$2000. (P-3.) In testimony that was taken during the hearing, the case worker, Brandon Carr testified that this amount of resource was in error. He testified that the amount of resource the petitioner had was \$3,542.84. This amount is as follows: \$2,117.76 from the Trust, and \$1,425 from the checking account ending in 0810. Petitioner argues that the amount in the Trust is excluded. I agree.

However an amount of \$20,000 was transferred into the 0810 checking account on September 16, 2022, from the grantor's account. Petitioner argues that the transfer

¹ Petitioner died on August 26, 2024. (P-8.)

was made in error. (See Petitioner's November 11, 2024 Brief.) Pursuant to N.J.A.C. 10:71-4.11(e)3:

In the case of an irrevocable trust from which payments from all or a portion of the trust cannot, under any circumstances, be made to or for the benefit of the individual, all of the trust, or any such portion or income thereof, shall be treated as a transfer of assets for less than fair market value (see N.J.A.C. 10:71-4.10).

Neither side has presented what happened to this money. This, however, is not the issue before me.

Based on the above, I **CONCLUDE** that the Trust is irrevocable and thus the assets located within the Grantor's Trust was not available to the petitioner.