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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL
ASSISTANCE AND HEALTH
SERVICES

E.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND

CAMDEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

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:
: **ADMINISTRATIVE ACTION**
:
: **FINAL AGENCY DECISION**
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: **OAL DKT. NO. HMA 10500-24:**
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As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 12, 2024, in accordance with an Order of Extension.

This matter arises from Morris County Office of Temporary Assistance's (Morris County) June 5, 2024 determination that Petitioner was eligible for Medicaid benefits effective May 1, 2024. R-1. Petitioner submitted the initial application (Application) for

NJ FamilyCare Aged, Blind, Disabled Programs Application on October 31, 2023.¹ A timely appeal was filed on or around July 18, 2024. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

N.J.A.C. 10:71-4.5(c) states that participation in the Medicaid Only program will be denied if the resources of an individual exceed \$2,000. In determining resource eligibility in accordance with N.J.A.C. 10:71-4.5(c), a resource must be "available." A resource shall be considered 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;..." N.J.A.C. 10:71-4.1(c).

Resource eligibility is determined as of the first moment of the first day of the month. 20 C.F.R. § 416.1207(a) and N.J.A.C. 10:71-4.1(e). Additionally, any resource that is not specifically excluded by regulation "shall be considered a countable resource for the purpose of determining Medicaid Only eligibility." N.J.A.C. 10:71-4.2(a). N.J.A.C. 10:71-4.4 (b3) allow for the exclusion of funds "in an irrevocable trust or other irrevocable arrangement which are available for burial are funds held in an irrevocable burial contract and irrevocable burial trust, or an amount in an irrevocable trust which is specifically identified for burial expenses." Finally, any money not spent for the individual's funeral arrangements upon his or her death must be paid to the State of New Jersey. N.J.S.A. 2A:102-20. See also Medicaid Communication 18-08 (stating, "If the beneficiary has an irrevocable contract for burial goods and services, the following information must be present in the contract: 1.) the State of New Jersey must be named as the beneficiary; and 2.) any funds remaining after the provision of burial/funeral goods and services shall be paid to the State.")

In their Application, the Petitioner indicated that they had a prepaid burial contract.

¹ The Initial Decision incorrectly lists the application year as 2024, but it was submitted in 2023.

ID at 2. On or around February 21, 2024, Camden County send the Petitioner a letter requesting Irrevocable Agreement Paperwork from Stanley Funeral Home signed by the Petitioner that showed when this was established as an Irrevocable Agreement because the document the Petitioner had submitted was neither signed by the Petitioner, had an electronic signature, and states that it is an agreement for a revocable trust. Id. at 2-3. On or around June 5, 2024, Camden County sent the Petitioner a letter stating their Application was approved effective May 1, 2024. Id. at 3.

At the Fair Hearing, Botonya Y. Harris, a human support specialist, testified that on or around October 6, 2023, Camden County received a copy of a preneed funeral agreement between the Petitioner and Stanley's Memorial Chapel dated October 2, 2023 (first burial contract). Ibid. The first burial contract did not include the Petitioner's signature or date, and it stated that the agreement was revocable and that the rights of the purchaser transfer to their next of kin. Ibid. Harris testified that Camden County had two issues with this burial contract. First, for a burial contract to be exempt from resources for Medicaid purposes, the assignment had to be nonrevocable, and second, the funds had to be assigned to the State of New Jersey.

The Petitioner then submitted a second preneed funeral arrangement (second burial contract), on or around October 31, 2023. This second burial contract was not signed or dated by the Petitioner. Camden County reviewed the second burial contract and believed that it had been backdated, as it received the second burial contract on October 31, 2023. Harris testified that Camden County also needed other information, including paperwork that is typically completed when a preneed funeral agreement is created. Camden County received additional documents from the Petitioner on or around April 10, 2024, including an irrevocable trust acceptance document between Stanley's Memorial Chapel and the Petitioner, and a copy of a cashier's check payable to the New

Jersey Prepaid Funeral Trust Fund, both of which are dated April 10, 2024. Id. at 4. Harris testified that she believed that this information was submitted to Camden County on a new application. Ibid. Camden County approved the Petitioner's Application for Medicaid MLTSS benefits effective May 1, 2024, because as of April 1, 2024, the Petitioner still had access to the money to be used for an irrevocable burial contract. After April 30, 2024, the money was no longer accessible to the Petitioner, making them eligible for Medicaid ML TSS benefits on May 1, 2024.

Roz Stokes Davis, the Petitioner's designated authorized representative (DAR) also testified at the Fair Hearing. She testified that in July 2023 she paid Stanley's Memorial Chapel \$ 7,800 on the Petitioner's behalf to create a prepaid burial agreement for the Petitioner. She testified that she was told that the prepaid burial funds were paid to Wells Fargo Bank. Davis further testified that she did not review the documents she received from Stanley's Memorial Chapel for the prepaid burial agreement, and sent those documents to Camden County so that the Application could be approved. Id. at 5. Camden County informed Davis that the first burial contract was revocable, not irrevocable, so she called Stanley's Memorial Chapel to remediate. Davis received revised documents from Stanley's Memorial Chapel, the second burial contract, which was also dated October 2 because Stanley's Memorial Chapel was trying to correct its error. Davis then received additional documents from Stanley's Memorial Chapel, which were provided to Camden County or around June 12, 2024 (third burial contract). Ibid. The third burial contract was irrevocable, and both the Petitioner. and a representative of Stanley's Memorial Chapel signed it. Ibid.

Davis also testified that representatives from Stanley's Memorial Chapel advised her that Wells Fargo Bank was no longer handling preneed burial funds and that Wells Fargo Bank refunded the Petitioner's funds. Ibid. The check refunding the Petitioner their

funds from Wells Fargo Bank was dated April 10, 2024. Davis then placed the preneed burial funds with Choices, which is the NJ Prepaid Funeral Trust Fund. Ibid. Davis said that the Petitioner's irrevocable burial contract was purchased on July 21, 2023, and that Petitioner should be eligible for Medicaid MLTSS benefits as of July 2023, not May 1, 2024. Ibid. While Davis does not know whether there was an Irrevocable Trust Acceptance document between Stanley's Memorial Chapel and the Petitioner for the preneed burial funds with Wells Fargo Bank. There is an Irrevocable Trust Acceptance document between the Petitioner, Stanley's Memorial Chapel and the New Jersey Prepaid Funeral Trust Fund Choices. R-1 at 26.

In the Initial Decision, the Administrative Law Judge (ALJ) found that the first burial contract did not include the Petitioner's signature or date, and it was a revocable agreement. Id. at 7. The State of New Jersey was not named as a beneficiary in the first burial contract. Camden County received the first burial contract on or around October 6, 2023. Ibid. Camden County advised Davis that the first burial contract was revocable. Ibid. The second burial contract also did not include the Petitioner's signature or date, even though it was an irrevocable agreement. Ibid. The State of New Jersey was not named as a beneficiary in the second burial contract. Ibid. The Agency received the second burial contract on or around October 31, 2023. Ibid. The second burial contract was dated October 2, 2023, the same day as the first burial contract. The dates on the first burial contract and second burial contract were the same because Stanley's Memorial Chapel was attempting to correct an error. Ibid. On or around April 10, 2024, Camden County received additional documentation from the Petitioner including an irrevocable trust acceptance document between Stanley's Memorial Chapel and the Petitioner, and a copy of a cashier's check payable to the New Jersey Prepaid Funeral Trust Fund, both of which are dated April 10, 2024. Ibid. Wells Fargo Bank stopped accepting funding for

preneed burial agreements and refunded E.S. the funds for his preneed burial agreement on April 10, 2024. Ibid. The ALJ found that the Petitioner had to satisfy certain regulatory requirements in order to exclude the \$7,800 prepaid burial funds from countable income for Medicaid purposes, and did not properly do so until April 10, 2024. Ibid. I agree.

While Davis originally paid the \$7,800 in prepaid burial funds in July 2023, there were no documents created memorializing the burial contract until October 2023, three months later. Both the first and the second burial contracts failed to satisfy the necessary regulatory criteria. The first burial contract was revocable, meaning that the Petitioner had access to the prepaid burial funds. The second burial contract was irrevocable, restricting the Petitioner's access to the prepaid burial funds, but the Petitioner did not sign the second burial contract. Also, the second burial contract did not state that the State of New Jersey would be the beneficiary. These failures prevented the Agency from excluding the prepaid burial funds from the Petitioner's resources to qualify for Medicaid MLTSS benefits. From the evidence presented during the hearing, neither Davis nor the Petitioner made any attempts to rectify these problems with the burial contract for six months, from October 2023 until April 2024, until Wells Fargo Bank refunded the Petitioner the prepaid burial funds. In April 2024, the Petitioner provided Camden County with the April 10, 2024, irrevocable trust acceptance document with Choices and the cashier's check for the \$7,800 burial funds. The Petitioner successfully created a burial trust, and because they no longer had access to the burial funds in April 2024, they qualified for Medicaid MLTSS benefits effective May 1, 2024.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision in this matter and FIND that the eligibility date for Petitioner's Medicaid benefits is May 1, 2024.

THEREFORE, it is on this 12th day of May 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health
Services