



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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TRENTON, NJ 08625-0712

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

JENNIFER VELEZ  
*Commissioner*

VALERIE HARR  
*Director*

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

E.M.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE	:	<b>OAL DKT. NO. HMA 363-2014</b>
AND HEALTH SERVICES AND	:	
BURLINGTON COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents in evidence. Both parties filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 29, 2014 in accordance with an Order of Extension.

This matter concerns testamentary trust set up by Petitioner's daughter. Burlington County determined that the trust counted toward Petitioner's

resources and denied her application due to excess resources. They determined that the trust was governed by N.J.A.C. 10:71-4.11(e). However, N.J.A.C. 10:71-4.11(c) specifically states that this portion of the regulation only applies when the grantor of the trust is the individual, their spouse or someone acting on the either member of the couple's behalf. As Petitioner is not the grantor nor did she contribute her assets to the corpus of the trust, the trust provisions do not apply. See N.J.A.C. 10:71-4.11(d).

The Initial Decision determined that the testamentary trust was an excludable resource under N.J.A.C. 10:71-4.4. That section permits the exclusion of resources "which are not accessible to an individual through no fault of his or her own". An example of such resources includes "irrevocable trust funds." However, those resources "shall be reevaluated (regarding their accessibility) at every redetermination." N.J.A.C. 10:71-4.4(b)6.ii.

Additionally, it must be noted that testamentary trusts are not excluded or exempt resources for Medicaid eligibility purposes but are "dealt with using applicable cash assistance program policies." SMM § 3259.1.A.2 See also Social Security Procedures Operations Manual System (POMS) SI 01120.200. As such, the availability of the trust corpus to pay for Petitioner's care is subject to the terms of her daughter's will and her testamentary intent. I am satisfied that in this matter, the income and corpus of the trust only affects Petitioner's eligibility when the trustee exercises discretion and makes payments either to Petitioner or on Petitioner's behalf. To that extent, Petitioner's eligibility shall be determined by taking into account payments made by the trust. While the funds remain in the trust, the corpus is not an available resource when determining Petitioner's Medicaid eligibility. In determining and redetermining Petitioner's Medicaid

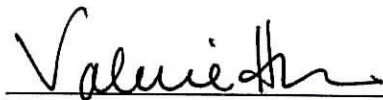
eligibility, Burlington County shall inquire if funds from that trust have been made available to Petitioner.

THEREFORE, it is on this <sup>29<sup>th</sup></sup> day of September 2014

ORDERED:

That the Initial Decision is hereby ADOPTED; and

That payments from the trust made to E.M. or on E.M.'s behalf be reported to Burlington County Board of Social Services to determine if there is any impact on E.M.'s eligibility.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services