



**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**

R.D.,

PETITIONERS,

V.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

HUDSON COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 09480-14**

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, the contents of the OAL case file and Respondent's exceptions to the Initial Decision. Neither party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision in this matter is November 7, 2014 in accordance with N.J.S.A. 52:14B-10 which

requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision in this matter was received on September 26, 2014.

Based upon my review of the record, I hereby ADOPT the findings, conclusions and recommended decision of the Administrative Law Judge with regard to Petitioner's eligibility.

Petitioner applied for Medicaid on or about March 21, 2014. On June 26, 2014, Hudson County Board of Social Services (HCBSS) denied Petitioner eligibility due to excess resources, specifically a life insurance policy with a cash value of \$7,602.35. Petitioner's life insurance policy is assigned to Miglaiccio Funeral Home. The State of New Jersey is listed as the beneficiary.

As I stated in the Final Agency Decision in R.W. and L.W. v. Division of Medical Assistance and Health Services and Burlington County Board of social Services, (OAL DKT. No. HMA 8236-03 and HMA 8732-03), Federal Medicaid Law allows applicants to prepay their funeral arrangements and have those resources be excluded from determining Medicaid eligibility through a burial fund or irrevocable trust. Federal Medicaid regulations prohibit funds set aside for burial to be used for any other purpose. As a result, the State statute allows for burial arrangements to be made through a burial trust funded by either cash or the proceeds of assigned life insurance policies or through an insurance policy purchased for the express purpose of paying for the funeral. N.J.S.A. 2A:102-13 et seq.

However, in order for the trust arrangement to be excluded from the eligibility determination, two criteria must be met: 1) the applicant must irrevocably relinquish or assign the funding source, whether it is cash or the

eventual payout of life insurance to the trustees and 2) the State of New Jersey will receive any funds remaining after the funeral bill is paid. N.J.S.A. 2A:102-19 and -20.

Furthermore, N.J.S.A. 2A:102-24 mandates that prepaid funeral agreements "shall include, in a conspicuous manner, the following statement: 'New Jersey law requires this agreement to be irrevocable for applicants or recipients of public assistance programs (such as the Medicaid, Supplemental Security Income (SSI), Work First New Jersey and Work First New Jersey General Public Assistance programs, or any successor program thereof) and for the State of New Jersey to be named as beneficiary of any irrevocable funeral trust or irrevocably assigned newly issued funeral insurance policy purchased or created for the provision and payment of funeral and burial goods and services. Any moneys remaining after the provision of funeral goods and services shall be paid over to the State as required by law.' " The agreement between the funeral home and Petitioner contains no such language.

The issue here turns to whether Petitioner irrevocably assigned her life insurance policy to Miglaiccio Funeral Home. Petitioner has not established that the assignment is irrevocable. As a result, the cash value of the life insurance policy is available to the Petitioner and countable as a resource. N.J.A.C. 10:71-4.1(b). Pursuant to N.J.A.C. 10:71-4.4(b)(9)ii1(A), the ALJ correctly found that the cash value in excess of \$1,500 is countable for the purpose of determining Medicaid eligibility.

THEREFORE, it is on this 6<sup>th</sup> day of NOVEMBER 2014,

ORDERED:

That the Initial Decision concluding that Petitioner is ineligible for Medicaid benefits is hereby ADOPTED.

A handwritten signature in black ink, appearing to read 'Valerie Harr', written over a horizontal line.

Valerie Harr, Director  
Division of Medical Assistance  
and Health Services