

benefits under the Community Care Waiver (CCW). That program has a resource limit of \$2,000 and applicants are subject to penalty for transferring assets in the five year preceding the application. Petitioner had lived with her mother until her mother's death in August of 2011. (ID at 2). At that point her sister, J.C., was granted a Power of Attorney to handle her affairs. J.C. also served as their mother's executrix. The will signed by their mother bequeathed the condominium to Petitioner. Petitioner also had a representative payee account that was funded with her Social Security benefits.¹

In February 2012, Petitioner, at the age of 68, created a "Supplemental Benefits Trust" that fails to follow the exclusionary trust rules found at 42 U.S.C. § 1396(d)(4)(A) and N.J.A.C. 10:71-4.11(g)(1). A trust set up under that authority permits the Medicaid agency to ignore the funds placed in the trust but the trust must be established prior to the Medicaid applicant turning the age of 65 and must contain provisions that the trust repay the State of New Jersey for the Medicaid. The trust Petitioner set up fails to comply with those rules.

On March 15, 2012, J.C., as executrix transferred the condominium from her mother's estate to Petitioner. On the same day Petitioner executed a deed to transfer the property to the Supplemental Benefits Trust. However, at the establishment of the trust, the condominium is listed on Schedule A as an asset of the trust; yet the property was not transferred until over a month later. See P-3

¹ There is no evidence that Petitioner's sister has supplied the accounting for their mother's estate. ID at 13. That would need to be produced on reapplication and may have an additional consequence on Petitioner's benefits.

and P-6. Petitioner's representative payee account was also listed on Schedule A.².

The Medicaid application was denied for excess resources as well as noting that several transfers would create "a substantial penalty period." R-1. Petitioner must first establish Medicaid eligibility before any transfer penalty may begin. To that end the application is denied and the penalty will be reexamined should Petitioner reapply.

The Initial Decision found that the denial was appropriate and that Petitioner had not met her burden to demonstrate that the application was improperly denied. Based on my review of the record and for the reasons set forth so completely by the ALJ, I hereby ADOPT the Initial Decision.

It is clear that the trust fails to comply with 42 U.S.C. § 1396(d)(4)(A) and N.J.A.C. 10:71-4.11(g)(1) as Petitioner was over 65 when the trust was established and when she transferred her assets, the trust rules at N.J.A.C. 10:71-4.11(e) apply.

In exceptions Petitioner argues that since the trust is "not a valid trust under 42 U.S.C. § 1396(d)(4)(A) and N.J.A.C. 10:71-4.11(g)(1)" the transfer of the condominium and Petitioner's assets are "not impermissible transfers: [as] it would be impossible to legally transfer an asset to a trust that did not exist under law." Petitioner continues this argument by stating that since "the transfer of the condo was invalid, [Petitioner] remained the owner of the condo." Exceptions at ¶ 3 and 4.

² It is unclear how Petitioner's representative payee account could be transferred to the trust as it specifically restricts payment for Petitioner's food or shelter. Trust at Section 2 (c). Social Security rules requires that a representative payee "use your benefits to pay for your needs.. . [such as] payment for food, shelter, clothes, medical care and personal comfort items." <http://www.ssa.gov/payee/faqbene.htm#a0=4>.

The legal validity of the trust and transfer is not at issue here as Petitioner had the legal right to set up the trust and make the transfers. It is the treatment of the transfer and the trust under the Medicaid laws that is the basis of this case. Failure to comply with 42 U.S.C. § 1396(d)(4)(A) and N.J.A.C. 10:71-4.11(g)(1) only means that the trust must be examined under the Medicaid rules for non-exempt trusts. Federal law provides that if there are any circumstances under which the trust could make funds available to the Medicaid beneficiary, those funds are considered available resources.

(3)(B) In the case of an irrevocable trust--

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual,....

42 U.S.C. §1396p(d). See also N.J.A.C. 10:71-4.11(e)(2)(iii).

Here Petitioner transferred funds that were available to her either by direct bequest or by the ownership that passed on death. As the trust provides that there may be payment to or for the benefit of Petitioner, the value of the entire corpus is available. Thus, as of June 1, 21012, the date that Petitioner seeks to establish eligibility, her various accounts, including the trust, totaled over \$50,000 rendering her ineligible for benefits.

The remaining exceptions were clearly addressed and explained in the Initial Decision. I FIND they are of no impact on the findings in this case.

Thus, for the reasons above and those set forth in the Initial Decision, I hereby ADOPT the Initial Decision that Petitioner was correctly denied Medicaid benefits due to excess resources. Should Petitioner reapply for benefits and be

found eligible, the transfer of assets identified in this matter shall be reviewed for use in any penalty period.

THEREFORE, it is on this 8th day of OCTOBER 2014

ORDERED:

That the Initial Decision in this matter 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