

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5632-07T2
A-6297-07T2

J.C.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent-Respondent,

and

OCEAN COUNTY BOARD OF SOCIAL SERVICES,

Respondent.

J.C.,

Petitioner-Appellant,

v.

STATE OF NEW JERSEY, DEPARTMENT
OF HUMAN SERVICES,

Respondent-Respondent.

Submitted December 7, 2009 - Decided February 8, 2010

Before Judges Alvarez and Coburn.

On appeal from the Department of Human
Services, Division of Medical Assistance and
Health Services.

Shebell & Shebell, attorneys for appellant (Danielle S. Chandonnet, on the briefs).

Anne Milgram, Attorney General, attorney for respondent, Division of Medical Assistance and Health Services (Melissa H. Raksa, Assistant Attorney General, of counsel; Zoe J. McLaughlin, Deputy Attorney General, on the brief).

Anne Milgram, Attorney General, attorney for respondent, State of New Jersey, Department of Human Services (Melissa H. Raksa, Assistant Attorney General, of counsel; Rachana R. Munshi, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner J.C. appeals final agency decisions of the New Jersey Department of Human Services denying her Medicaid, Work First New Jersey/General Assistance and Food Stamp benefits. The appeals were calendared back-to-back, and we now consolidate them for disposition in a single opinion. We affirm on both appeals.

Some background is necessary. The workers' compensation court awarded petitioner \$308 per week on July 16, 2007, finding her to be totally and permanently disabled due to injuries sustained at her place of employment as a result of a fall. After the workers' compensation matter was completed, a document was prepared in her behalf titled "special needs trust," purporting to comply with and, in fact, specifically citing to, the requirements of 42 U.S.C.A. § 1396. Although not

corroborated in the record we have been provided, according to petitioner's brief, this document was on an unspecified date presented to a Law Division judge for "approval." The trust document was signed on September 6, 2007, by petitioner, the named trustee, who is petitioner's mother, and the workers' compensation judge.

The trust states that its purpose is to "supplement rather than supplant, impair or diminish governmental entitlements." Contemporaneously with the creation of the trust, petitioner applied for Work First New Jersey/General Assistance and Food Stamp benefits and Medicaid. Because the special needs trust was not deemed to exempt petitioner's workers' compensation funds from inclusion in the eligibility determination, benefits were denied by the Ocean County Board of Social Services (OCBSS).

Overall, on judicial review, "[o]ur function is to determine whether the administrative action was arbitrary, capricious or unreasonable." Burris v. Police Dep't, Twp. of W. Orange, 338 N.J. Super. 493, 496 (App. Div. 2001) (citing Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980)). See also Aqua Beach Condo. Ass'n v. Dep't of Cmty. Affairs, 186 N.J. 5, 15-16 (2006) (citations omitted). The agency decision must be supported by substantial credible evidence in the record as a

whole. Circus Liquors, Inc. v. Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)). It must not offend either the state or federal constitution and must accord with the agency's legislative mandate. See ibid. (citation omitted). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div.), certif. denied, 188 N.J. 219 (2006) (citations omitted). See also Barone v. Dep't of Human Servs., 210 N.J. Super. 276, 285 (App. Div. 1986), aff'd, 107 N.J. 355 (1987) (citations omitted).

MEDICAID BENEFITS

The Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), issued its final decision denying petitioner Medicaid benefits on May 31, 2008. In his final decision, the Director of DMAHS reversed the initial decision made by an Administrative Law Judge (ALJ) after the matter was transmitted to the Office of Administrative Law as a contested case upon petitioner's appeal of the OCBSS denial of Medicaid benefits. We affirm the final agency determination essentially for the reasons stated in the May 31, 2008 letter of decision. We make only the following comments.

The matter was heard by the ALJ on February 13, 2008. His initial decision concluded that because J.C. was a disabled adult and the trust was "irrevocable," the workers' compensation payments allotted to her were exempt from inclusion in the calculation for Medicaid eligibility. The matter was then returned to DMAHS, and the OCBSS exceptions to the initial decision followed.

A special needs trust that effectively exempts assets or income from inclusion in Medicaid eligibility calculation can be established for the benefit of an individual deemed disabled pursuant to 42 U.S.C.A. § 1382c(a)(3). 42 U.S.C.A. § 1396p(d)(4)(A). The disability determination, however, can only be made by the Social Security Administration or the state disability review team, and only based on the definition set forth in the federal statute. See N.J.A.C. 10:71-3.10 to -3.12(a). Hence, the workers' compensation court judgment as to petitioner's disability, issued by a judge in the workers' compensation context, is not dispositive of whether she is "disabled" pursuant to the federal definition. See N.J.A.C. 10:71-3.10. As the Director of DMHS stated, unless and until petitioner is found to be disabled by the Social Security Administration or the state disability review team, she is not entitled to protect her assets through the use of a special

needs trust. See Determining Disability and Blindness, 20 C.F.R. § 404.1504 (2009); Determining Disability and Blindness, 20 C.F.R. § 416.904 (2009).

For that reason, petitioner's points on appeal that a special needs trust is recognized by state and federal law are irrelevant. Unless petitioner's threshold disability determination is made in the legislatively authorized manner, we need look no further, as no qualified special needs trust can be created for a person not deemed disabled. This agency decision was therefore not arbitrary, capricious or unreasonable. It complied with DMAHS's legislative mandate, both federal and state.

Furthermore, contrary to petitioner's assertion, the fact that the ALJ noted that her disability was not disputed does not relieve her of the obligation to adhere to federal and state requirements. The ALJ did not refer to the federal definition of disability that is a prerequisite to the creation of a special needs trust in his initial decision; he did not address this issue at all. In any event, even if undisputed, her disability cannot bypass the federal and state legislative scheme.

DENIAL OF WORK FIRST NEW JERSEY/GENERAL
ASSISTANCE AND FOOD STAMPS

The July 10, 2008 final decision of the Director of the Department of Human Services, Division of Family Development (DFD), begins by observing that petitioner's special needs trust did not comply with federal law. As did her counterpart in the DMAHS, the Director stated that a special needs trust requires a disability determination within the meaning of federal law, in this instance pursuant to 42 U.S.C.A. § 1382c(a)(3). Absent that determination, a special needs trust cannot exempt petitioner's workers' compensation benefits from inclusion in the determination of petitioner's general assistance and food stamp eligibility. We affirm essentially for the reasons stated in the DFD Director's decision, adding only the following brief comments.

The eligibility requirements for Work Force New Jersey/general assistance and food stamps benefits are contained in N.J.A.C. 10:90-1.1 to -20.13 and N.J.A.C. 10:87-1.1 to -12.7 respectively. Eligibility is "determined according to standards of countable income . . . and countable resources." N.J.A.C. 10:90-3.1(a). The definition of income includes trust income. N.J.A.C. 10:90-3.9(b). Countable income is any income not exempt as defined in N.J.A.C. 10:90-3.19 and includes both earned and unearned income. See N.J.A.C. 10:90-3.9(a) and (b).

Workers' compensation benefits are not exempt pursuant to N.J.A.C. 10:90-3.19. Therefore, because the compensation payments are not exempt they must be included in assessing petitioner's eligibility for general assistance benefits.

Income derived from trusts is not made exempt in either N.J.A.C. 10:90-3.19 and N.J.A.C. 10:90-3.20. In fact, trust funds fall within the countable resource category created by N.J.A.C. 10:90-3.10(b), because it is "cash and other forms of income immediately obtainable to meet the needs" of an applicant. Simply stated, a general assistance applicant should not be found to qualify for benefits while sheltering funds earmarked for his or her use.

Petitioner contends that even if the document she submitted did not create a qualified special needs trust, the strict requirements of federal law are only relevant to her Medicaid application and should not affect her application for general assistance and food stamps. Even if the argument was not internally inconsistent, the trust document itself gives petitioner so much control over her assets and income stream as to make the income "countable income" under relevant regulations.

Workers' compensation benefits are not assignable, as stated in N.J.S.A. 34:15-29, "[c]laims or payments due under

this chapter shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment." This means that the workers' compensation payments essentially come to J.C. first and that she alone has the ultimate authority to dispose of them. Examined from this perspective, regardless of the language of the special needs trust, the workers' compensation payments are includable.

Additionally, the very language contained within the four corners of the document makes the special needs trust neither irrevocable nor in the absolute control of the trustee. It states that the trust will terminate should it "be counted as an asset, resource or income in determining [petitioner's] eligibility for local, state or federal government aid. . . ."

Accordingly, the agency's decision that the weekly compensation payments petitioner will be receiving throughout her lifetime are countable income for purposes of determining her Work Force New Jersey/General Assistance and Food Stamps eligibility is not arbitrary, capricious or unreasonable. It too complies with the agency's legislative mandate and advances legislative goals.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION