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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2092-13T4

D.W.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent-Respondent.

Submitted November 2, 2015 – Decided December 2, 2015

Before Judges Accurso and Suter.

On appeal from the New Jersey Department of Human Services, Division of Medical Assistance and Health Services, Docket No. 9020039623-01.

Price & Price, LLC, attorneys for appellant (Carl Ahrens Price, of counsel and on the brief).

John J. Hoffman, Acting Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Jennifer L. Finkel, Deputy Attorney General, on the brief).

PER CURIAM

D.W. appeals from a final decision of the Director of the Division of Medical Assistance and Health Services (DMAHS)

determining him ineligible for Medicaid because his self-settled first-party trust was a countable, available resource exceeding the Medicaid resource limit. Having considered the provisions of the trust agreement in light of applicable law, we affirm.

The essential facts are undisputed. D.W. is a twenty-nine-year-old developmentally disabled man who resides in a group home. In compliance with Division of Developmental Disabilities (DDD) requirements, see N.J.S.A. 30:4-25.9a(2); N.J.A.C. 10:46-1.1(b), he applied for Community Care Waiver Medicaid Only benefits through DMAHS.[1] DMAHS denied D.W.'s application based primarily on the existence of a self-settled 2008 "Supplemental Benefits Trust," which it found "does not meet the Special Needs Trust Guidelines in accordance with Medicaid regulations."[2]

D.W. requested a fair hearing, and DMAHS transmitted the matter to the Office of Administrative Law. The administrative law judge (ALJ) determined that D.W.'s trust, the "Irrevocable Declaration of Supplemental Benefits Trust and Trust Agreement for [D.W.]," was established by court order in January 2008 and

[1] DMAHS describes Community Care Waiver as "a Medicaid waiver program for individuals with developmental disabilities, to enable individuals to avoid institutionalization and remain in the community."

[2] DMAHS identified other issues beyond the trust agreement in support of its denial. Those issues are not part of this appeal.

funded from the proceeds of D.W.'s personal injury recovery of $278,389.28. The ALJ accepted D.W.'s argument that the trust was never intended as a special needs trust but was designed as a supplemental benefits trust, also known as a self-settled special needs trust. Notwithstanding, the ALJ found that "however defined" a Medicaid-compliant self-funded trust "must meet specific requirements," chief among them the inclusion of a payback provision insuring "repayment to the State of an amount equal to the total amount of medical assistance, if any, which is paid to D.W. under the State Medicaid Plan."

Because D.W.'s trust lacked a payback provision, the ALJ found it was not a compliant special needs trust pursuant to 42 U.S.C.A. § 1396p(d)(4)(A), and thus DMAHS was correct to deny D.W. Medicaid eligibility. The Director adopted the ALJ's decision, finding the trust an available, countable resource for Medicaid eligibility purposes pursuant to 42 U.S.C.A. § 1396p(d) and N.J.A.C. 10:71-4.11(e). This appeal followed.

D.W. contends the agency erred in classifying his trust as a countable resource for Medicaid eligibility purposes. He argues that his trust is an irrevocable supplemental benefits trust, which because it is irrevocable and he is without right to compel distributions, does not require a payback provision

and cannot be considered an available resource for Medicaid purposes.

DMAHS contends that D.W.'s trust does not qualify as a supplemental benefits trust because it was funded with his own assets. It claims D.W.'s reliance on statutes addressing irrevocable, discretionary trusts created by third parties is misplaced as they have no applicability to self-funded trusts. DMAHS maintains that D.W.'s trust, regardless of what it is called, is not a supplemental benefits trust funded by a third party but a first-party self-settled trust, which because it lacks a payback provision, is an available resource by law.

DMAHS is correct. Medicaid is a federally created, state-run program designed "to provide medical assistance to the poor at the expense of the public." Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004) (quoting Mistrick v. Div. of Med. Assist., 154 N.J. 158, 165 (1998)), certif. denied, 182 N.J. 425 (2005); see also Atkins v. Rivera, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458, 91 L. Ed. 2d 131, 137 (1986). Since 1986, Congress has taken steps to curb Medicaid applicants attempting to shelter their assets in irrevocable trusts in order to take benefits from the state while preserving their own assets for themselves and their heirs. See Ramey v. Reinertson, 268 F.3d 955, 958-59 (10th Cir.

2001) (discussing this phenomena and Congressional response in enacting 42 U.S.C.A. § 1396a(k) and its subsequent replacement with "another statute even less forgiving of such trusts").

With the passage of the federal Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Pub. L. No. 103-66, § 13611(b), 107 Stat. 312, 624-25 (codified as amended at 42 U.S.C.A. § 1396p(d)), Congress established that trusts would, as a general rule, be counted as available assets subject to certain limited, defined exceptions. For a self-settled trust, such as D.W.'s, to be excluded as an available resource, it must meet specific requirements, most notably "that the [S]tate must 'receive all amounts remaining in the trust upon the death' of the trust beneficiary 'up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan,'" the so-called "pay-back provision." J.B. v. W.B., 215 N.J. 305, 323 (2013) (quoting 42 U.S.C.A. § 1396p(d)(4)(A)); accord N.J.A.C. 10:71-4.11(g)1xii.

The critical issue here "for Medicaid eligibility purposes is who established the trust." In re Lennon, 294 N.J. Super. 303, 307, 310-11 (Ch. Div. 1996) (explaining how third-party supplemental benefits trusts meet N.J.A.C. 10:71-4.4(b)6, which excludes "the value of resources which are not accessible to an individual through no fault of his or her own," but self-settled

trusts, by definition, cannot). Because there is no question but that D.W.'s own assets recovered from a personal injury lawsuit were used to fund the trust, the law is clear that his is a self-settled trust which must comply with 42 U.S.C.A. § 1396p(d)(4)(A) and N.J.A.C. 10:71-4.11(g)1xii, to be considered an excludable resource. Because D.W.'s trust admittedly lacks the payback provision required by those enactments, the Director was correct to conclude it is an available resource rendering him ineligible for Medicaid.[3]

Because we conclude the Director correctly applied the law to the undisputed facts, we affirm.

Affirmed.

[3] D.W. requests that if his trust is determined to be an available resource, we remand to the agency to permit the trustee to reform the trust by adding the payback provision and making any other changes necessary. We decline to do so because reformation of the trust will likely require court approval. D.W. may reapply for Medicaid when he has successfully reformed his trust to comply with all Medicaid eligibility requirements. See 42 U.S.C.A. § 1396p(d)(4)(A) and N.J.A.C. 10:71-4.11(g)1.