



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. HMA 17039-16

G.V.,

Petitioner,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES AND  
MONMOUTH COUNTY DIVISION  
OF SOCIAL SERVICES,  
Respondent.

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Frederick P. Niemann, Esq., appearing for petitioner (Hanlon Niemann & Wright, attorneys)

Lourdes Martin, Fair Hearing Liaison, appearing for respondent Monmouth County Division of Social Services pursuant to N.J.A.C. 1:1-5.4(a)(3)

No appearance on behalf of respondent Division of Medical Assistance and Health Services

Record Closed: January 6, 2017

Decided: January 27, 2017

BEFORE SUSAN M. SCAROLA, ALJ:

### STATEMENT OF THE CASE

Petitioner, G.V., appeals the denial of eligibility for the Nursing Home Medicaid Program by respondent Monmouth County Division of Social Services (MCDSS) as the result of having resources available to her, namely, resources contained in a trust that exceed \$2,000.

### PROCEDURAL HISTORY

On July 14, 2016, the petitioner commenced the Medicaid application process with the MCDSS. On October 27, 2016, the petitioner was denied eligibility. The petitioner filed a timely request for a hearing. The matter was transmitted to the Office of Administrative Law, where it was filed on November 9, 2016. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The petitioner filed a motion for summary decision on December 5, 2016.<sup>1</sup> Oral argument of the motion was heard on the scheduled hearing date of January 6, 2017.

### STATEMENT OF FACTS

The following facts are not in dispute and, accordingly, I FIND:

1. On May 12, 2011, petitioner executed the "Grace M. Vinci Income Only Trust" ("Trust"). The Trust Agreement identifies petitioner as grantor and D.M.A., petitioner's daughter, as Trustee. The corpus of the trust includes "the property described in Exhibit A hereto, together with such monies, securities and other assets as the Trustee hereafter at any time may hold or acquire hereunder." Ibid. Exhibit A does not make clear to what property the Trust Agreement is referring.
2. As provided in "Article First," the Trustee is required to pay the net income of the Trust to or for the benefit of the petitioner during her lifetime.

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<sup>1</sup> The MCDSS did not file a responsive pleading to the motion.

"Article Third" of the Trust Agreement states: "This Agreement and the trusts created hereunder are irrevocable." Under "Article Fourth," in the event that the size of the principal becomes such that it is inadvisable or unnecessary to continue the Trust, the Trustee, in her absolute discretion, is authorized to pay and distribute the principal of the Trust to the remainderman beneficiaries. In any case, "no such distribution shall be made to the Grantor."

3. On May 26, 2011, two weeks after the Trust was established, the Trust acquired a property at 158 E. Crooked Hill Road, Pearl River, NY 10965. The deed was signed by D.M.A. in her capacity as Trustee.<sup>2</sup>
4. On July 14, 2016, approximately sixty-two months after the house was purchased by the Trust, petitioner applied for Medicaid benefits. Prior to receiving a formal decision from respondent, petitioner's counsel was in contact with the caseworker responsible for evaluating petitioner's application. In an e-mail dated August 17, 2016, the worker concluded that the Trust Agreement did not meet all of the requirements set forth in N.J.A.C. 10:71-4.11 and identified three reasons for this conclusion.
5. First, he noted that although the trust declares itself to be irrevocable, "Article Fourth" of the Trust Agreement indicates that it can be terminated anytime in the Trustee's absolute discretion. Second, "[t]he trust should specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits of assistance of any Federal, State or any other government entity for which the beneficiary may otherwise be eligible." And, third, pursuant to N.J.A.C. 10:71-4.11(a)(6), "[a] home whether excluded or not, when transferred into a trust, shall be presumed to have been transferred for the purpose of qualifying for Medicaid."

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<sup>2</sup> The property was sold in 2015; the trust contained assets of approximately \$76,641 as of August 2016.

6. By notification dated October 27, 2016, respondent formally denied petitioner's application for Medicaid benefits. The letter stated that the Trust did not meet all of the requirements set forth in N.J.A.C. 10:71-4.11 because the total available resources in the Trust exceeded the \$2,000 cap.

### LEGAL ANALYSIS AND CONCLUSION

Medicaid is a program established by Title XIX of the Social Security Act, 42 U.S.C.A. 1396 et seq., designed "to provide medical assistance to persons whose income and resources are not sufficient to meet the costs of necessary care and services." Atkins v. Rivera, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458, 91 L. Ed. 2d 131, 137 (1986). Benefits are governed through a combination of federal and state law. New Jersey's Medicaid program derives its authority from the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1.2 to 19.1. The majority of the controlling regulations are found in the Medicaid Only Manual, N.J.A.C. 10:71-1.1 to -9.5.

In determining Medicaid eligibility, both the resources and the income of an applicant are considered. Resources are defined as

any real or personal property which is owned by the applicant (or by those persons whose resources are deemed available to him or her, as described in N.J.A.C. 10:71-4.6) and which could be converted to cash to be used for his or her support and maintenance. Both liquid and non-liquid resources shall be considered in the determination of eligibility, unless such resources are specifically excluded under the provisions of N.J.A.C. 10:71-4.4(b).

[N.J.A.C. 10:71-4.1(b).]

To be considered in the determination of eligibility, a resource must be "available," meaning that the person has "the right, authority or power to liquidate real or personal property or his or her share of it." N.J.A.C. 10:71-4.1(c). Additionally, the resource must be "countable." For purposes of determining Medicaid eligibility, a "countable"

resource is "[a]ny resource which is not specifically excludable under the provisions of N.J.A.C. 10:71-4.4." N.J.A.C. 10:71-4.2(a). Among the excludable resources listed in the regulation are "[t]he value of resources which are not accessible to an individual through no fault of his or her own." N.J.A.C. 10:71-4.4(b)(6). Such resources include, but are not limited to, irrevocable trust funds. N.J.A.C. 10:71-4.4(b)(6)(i).

In moving for summary decision, petitioner argues that the Trust is irrevocable and, thus, should be excluded when assessing her Medicaid eligibility. In a contested case, the standard for a motion for summary decision is "if the papers and discovery which have been filed, together with the affidavits, if any show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

The issue is whether the Trust is countable for Medicaid purposes.

- I. **Is the Trust countable for Medicaid purposes because the resources contained within would be accessible to petitioner but for her own "fault"?**

An "irrevocable trust" is defined as "a trust which cannot, in any way, be revoked by the grantor." N.J.A.C. 10:71-4.11(c)(3). In contrast, a "revocable trust" is

a trust which can, under State law, be revoked by the grantor. A trust, which provides that the trust can be only modified or terminated by a court, is considered to be a revocable trust, since the grantor (or his or her representative) can petition the court to terminate the trust. Also, a trust that declares itself to be irrevocable, but which terminates upon conditions relating to the grantor during his or her lifetime, shall be, for the purposes of this section, considered to be revocable. For example, a trust may require a trustee to terminate a trust and disburse the funds to the grantor if the grantor leaves a nursing facility. Such a trust shall be considered to be revocable.

[N.J.A.C. 10:71-4.11(c)(2).]

There is no provision in petitioner's Trust that grants her the power of revocation. Additionally, there is nothing that states that the Trust can only be modified or terminated by a court. Further, the Trust does not terminate upon any conditions relating to petitioner during her lifetime. For these reasons, the Trust is irrevocable.

As evidenced in his August 17, 2016, e-mail to petitioner's counsel, the caseworker took issue with "Article Fourth" of the Trust Agreement, which provides that the Trust can be terminated by the Trustee at any time, in her sole discretion, if she determines that the size of the principal is such that it would be inadvisable or unnecessary to continue the Trust. However, as long as the decision to terminate the Trust is within the Trustee's discretion and not dependent on any conditions relating to petitioner, the Trust is irrevocable.

Nevertheless, just because the Trust meets this definition of "irrevocable" does not mean that it must be excluded for purposes of determining Medicaid eligibility. N.J.A.C. 10:71-4.4(b)(6)(i) provides that resources contained in irrevocable trust funds are excluded only if they are inaccessible to an individual through no fault of his or her own. In M.F. v. DMAHS and Bergen County Board of Social Services, HMA 9813-97, Initial Decision (April 5, 1998), adopted, Comm'r (May 22, 1998), <<http://njlaw.rutgers.edu/collections/oal/>>, upon learning that the petitioner had Alzheimer's, the petitioner's husband set up an irrevocable, inter vivos trust that was used to pay property taxes, homeowner's insurance, and home expenses. Id. at 2-3. When the petitioner applied for Medicaid benefits seven years later, she was denied on the basis of the resources contained in this trust. The administrative law judge (ALJ) concluded that the trust was a non-excluded resource for purposes of determining Medicaid eligibility, noting:

[a]lthough "fault" might not be the right word as it has pejorative connotations, it is certainly the creation of a trust by petitioner and her husband which made these funds inaccessible to the petitioner herself absent an exercise of discretion on the part of the trustee. To that extent . . . this irrevocable trust is not excluded.

[M.F., supra, HMA 9813-97, Initial Decision (April 5, 1998),  
<<http://njlaw.rutgers.edu/collections/oal/>>.]

In Dickson v. DMAHS and Bergen County Board of Social Services, OAL Dkt. No. HMA 5383-96, Initial Decision (March 24, 1997), adopted, Comm'r (May 12, 1997), the ALJ more directly concluded, "It appears that, for Medicaid purposes, a trust can only be irrevocable if it is a third-party trust in which the settlor creates a trust for the benefit of another (not himself or herself), to be administered by the trustee." Under this interpretation, only third-party irrevocable trusts are excludable resources for Medicaid purposes.

More recently, in K.L. v. DMAHS and Gloucester County Board of Social Services, HMA 11454-14, Initial Decision (January 13, 2015), <<http://njlaw.rutgers.edu/collections/oal/>>, the grantor created a trust with proceeds she received from a real-estate sale and named herself as sole beneficiary and trustee. Later, the grantor's son succeeded his mother as trustee due to her inability to manage the trust herself. The trust entitled the grantor to receive all of the net income from the trust estate; however, the trust made no provision for compelling distributions from the trust corpus nor to liquidate the same except upon the death of the grantor. Over twenty years after the trust was established, the grantor applied for Medicaid benefits and was denied because of the resources contained in the trust, which the DMAHS considered to be both available and accessible. The ALJ agreed with this assessment, noting:

[u]nder both federal and state law, trusts established by a Medicaid applicant through his or her own action cannot, for Medicaid purposes, be "irrevocable" and are available and countable assets and will prevent Medicaid eligibility as being violative of public policy for diverting scarce federal and state resources from the low income elderly, the disabled, poor women and children.

[K.L., supra, HMA 11454-14, Initial Decision (January 13, 2015), <<http://njlaw.rutgers.edu/collections/oal/>>.]

Here, the Trust established by petitioner is non-excludable for purposes of determining Medicaid eligibility. The resources contained in the Trust are inaccessible

to petitioner due to her own "fault." In other words, she would have had access to the Trust assets but for her decision to create a trust over which she has no control. The Trust is similar to that in K.L. v. DMAHS, supra, HMA 11454-14, Initial Decision (January 13, 2015), <<http://njlaw.rutgers.edu/collections/oal/>>, in that petitioner is entitled to the net income of the Trust but not to distributions from the corpus. In that case, the ALJ nevertheless considered the assets to be available and countable for Medicaid purposes. For these reasons, the resources contained in petitioner's Trust were properly considered in determining her Medicaid eligibility.

**II. Does the Trust qualify as an exempt special-needs trust?**

A special-needs trust is a trust "containing the assets of a disabled individual and which is established prior to the time the disabled individual reaches the age of 65 and which is established for the sole benefit of the disabled individual by a parent, grandparent, legal guardian of the disabled individual or a court." N.J.A.C. 10:71-4.11(g)(1). When all of the requirements set forth in N.J.A.C. 10:71-4.11(g)(1) are met, a special-needs trust may be granted exemption as a resource for Medicaid purposes. Ibid.

One requirement for the establishment of a special needs trust is that

[t]he trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.

[N.J.A.C. 10:71-4.11(g)(1)(iii).]

The petitioner's Trust does not contain the above language. In fact, petitioner concedes that "[t]he subject Trust is neither a Special Needs Trust nor a Supplemental Needs Trust." Upon examination, the Trust lacks many of the hallmarks of such instruments. For example, the Trust does not state "the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3) and whether the



trust beneficiary is competent at the time the trust is established." N.J.A.C. 10:71-4.11(g)(1)(iv). Further, there is no indication that the Trust was established "by a parent, grandparent, legal guardian of [petitioner] or a court." Rather, it was set up by petitioner herself. Thus, the Trust at issue does not qualify for an exemption as a special-needs trust.

**III. The sixty-month look-back period is irrelevant in determining whether the Trust is an excludable resource.**

"An individual shall be ineligible for institutional level services through the Medicaid program if he or she . . . has disposed of assets at less than fair market value at any time during or after the 60-month period immediately before . . . the date the individual applies for Medicaid as an institutionalized individual." N.J.A.C. 10:71-4.10(a)(2). "Periods of ineligibility cannot be imposed for resource transfers which take place prior to the look-back period." N.J.A.C. 10:71-4.10(b)(9)(iv).

In M.F., the petitioner created an irrevocable, self-settled trust approximately seven years before applying for Medicaid benefits. In determining that the trust was a non-excluded resource for Medicaid purposes, the ALJ found it of no consequence that the trust was initially established beyond the look-back period. The ALJ stated:

It is important to note that what is being discussed in this case is solely and exclusively the existence of a non-excluded resource. This case is not a question of a transfer of resources for less than fair market value (FMV) during any potential period of ineligibility. While petitioner's counsel discusses periods of ineligibility triggered by a "look back," those issues are entirely irrelevant to the instant case. These assets were not given as a gift or transferred for less than FMV within the period of the look back and therefore that issue need not be addressed.

[M.F., supra, HMA 9813-97, Initial Decision (April 5, 1998), <<http://njlaw.rutgers.edu/collections/oal/>>.]

As explained by petitioner, the house was bought and transferred to the Trust on May 26, 2011, and petitioner's Medicaid application was filed on July 14, 2016,

approximately sixty-two months later. Therefore, the transfer of the home into the Trust is beyond the look-back period. However, as demonstrated in the M.F. case, this issue is irrelevant. Petitioner's case likewise does not deal with assets given as a gift or transferred for less than FMV. Rather, the sole issue is whether the Trust should be an excluded resource for purposes of determining Medicaid eligibility. For the above-stated reasons, the Trust fails to qualify as such, and the assets contained therein should be included as a countable resource that exceeds \$2,000.

Based on the foregoing findings of fact and conclusions of law, I **CONCLUDE** that the MCDSS's determination to include the Trust as an available resource to the petitioner should be affirmed.

**ORDER**

I **ORDER** that the Monmouth County Division of Social Services' determination that the petitioner is ineligible for Medicaid Only Nursing Home benefits is **AFFIRMED**.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within seven days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, Mail Code #3, PO Box 712, Trenton, New Jersey 08625-0712, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 27, 2017

DATE

  
\_\_\_\_\_  
SUSAN M. SCAROLA, ALJ

Date Received at Agency:

January 27, 2017

Date Mailed to Parties:

2/1/17

SMS/cb

**APPENDIX**

**WITNESSES**

**For petitioner:**

None

**For respondents:**

Lauren Townsend, Human Services Specialist 3

M. Islam, Human Services Specialist 2

Roman Eisberg-Tracz, Human Services Specialist 4

**EXHIBITS**

**For petitioner:**

Brief

**For respondents:**

Summary report, including

R-1 Application

R-2 Letter dated July 28, 2016

R-3 Real-estate documents

R-4 Grace M. Vinci Income Only Trust

R-5 Emails

R-6 Letter dated October 27, 2016

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DECLARATION OF TRUST

made as of May 12, 2011

by

GRACE M. VINCI

Grantor

and

DONNA MARIE ALLISON

Trustee

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DECLARATION OF TRUST

DECLARATION OF TRUST, made as of May 12, 2011, between GRACE M. VINCI, having an address at 140 South Mountain View Avenue, Pearl River, New York as Grantor (hereinafter referred to as the "Grantor"), and DONNA MARIE ALLISON, having an address at 10 Wildwood Drive, Pearl River, New York 10965, as trustee (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Grantor is the owner of the property more particularly described in Exhibit A attached hereto and made a part hereof) and

WHEREAS, the Grantor desires to create an irrevocable trust of the property described in Exhibit A hereto, together with such monies, securities and other assets as the Trustee hereafter at any time may hold or acquire hereunder (said property, monies, securities and other assets, together with any addition thereto received pursuant to the Grantor's Last Will and Testament or otherwise, being hereinafter referred to as the "trust fund"), for the purposes and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants herein contained, and other valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Grantor hereby irrevocably transfers, conveys, assigns and delivers to the Trustee as and for the trust fund the property more particularly described in Exhibit A hereto, to hold the same, and any other property which the Trustee hereafter may acquire, IN TRUST, for the purposes and upon the terms and conditions hereinafter set forth.

Grantor and Trustee understand and agree that in the event the trust includes property subject to an age restriction contained in the condominium or cooperative offering plan and/or a local municipal ordinance mandating an age restriction; then in that event such age restriction shall be observed with regard to the persons permitted to occupy the unit.

This trust shall be known as the GRACE M. VINCI INCOME ONLY TRUST  
DATED May 12, 2011.

ARTICLE FIRSTBeneficiaries of Trust

A. The Trustee shall hold, manage, invest and reinvest the trust property, subject to the provisions of this Trust, and shall pay, apply and distribute the income and principal in the following manner:

1. The net income of the Trust shall be paid periodically, but not less frequently than annually, to or for the benefit of the Grantor during the Grantor's lifetime.

2. Upon the death of the Grantor, the Trustee shall pay out of principal or income the expenses of the deceased Grantor's funeral and burial, to the extent that those items shall not be paid or responsibility for their payment assumed by some other person or estate.

3. The Grantor shall have an exclusive right of occupancy in any residence or real property (including any replacement) which is held at any time by this Trustee during the lifetime of the Grantor. In the event that this Trust holds such residential real property used by the Grantor, then the Grantor shall have the right to occupy the said real property (including a cooperative apartment or a senior or adult facility with a proprietary program) for residential purposes. If the Grantor ceases to use such property as a residence (permanently or seasonally) the Trustee may, in the exercise of absolute discretion, either continue to hold such property as an investment or sell the property. Notwithstanding the above, any purchaser of real property owned by this Trust will be entitled to rely upon the authority of the Trustee to sell such real property. Upon the request of the Grantor, the Trustee may, in the Trustee's sole reasonable discretion, purchase or rent substitute property or properties to be used for dwelling purposes of the Grantor. That substitute property purchased shall be part of the principal of this Trust. The Grantor shall not be required to pay rent for such property, but shall be responsible for and required to pay all of the expenses of the maintenance of the property, including taxes, insurance, utilities, mortgage payments and normal costs of maintenance and upkeep of the property. This is intended to be a Grantor Trust and Grantor is authorized and entitled to apply for any real estate reduction or exemption program including the New York STAR Program. In the event no substitute property or properties are purchased by the Trust the Trustee shall hold the net proceeds of the sale in Trust and the net income resulting from the principal shall be paid by the Trust to the Grantor during the Grantor's lifetime periodically, but not less frequently than annually.

4. Upon the death of the Grantor, the Trustee shall distribute the remainder of the Trust estate, including principal and undistributed income, to the Grantor's issue as follows:

I have three children, DONNA MARIE ALLISON, DEBRA ANN HETTMER and FRANK A. VINCI. All references in this trust to my "children" are to said named "children".

Upon my death, the remaining principal and income, if any, shall be distributed as follows:

To or for the benefit of any one or more of my children surviving me, or their descendants as I shall appoint by Will; and



To the extent that I have not exercised this power of appointment by my Will, Trustee shall pay the remaining principal and accrued income, if any, equally among my children, or if any of my children fail to survive me, then to his or her descendants by representation.

If any of my beneficiaries die before the entire principal of such trust has been withdrawn, the entire principal shall be distributed by my Trustee to my said Beneficiary's then-living descendants by representation; or, in default of such descendants, to my living descendants by representation or, in default of such descendants, to the persons who would be entitled to inherit from me under the Intestate Laws of the State of New York.

B. It is Grantor's express intent that the provisions of any law which would permit invasion of the principal of a trust shall not apply to the trust herein created and it is Grantor's intent that no court may, in its discretion, make any allowance from principal to grantor. No assets of this trust shall be considered available to me for determining my income or assets under the rules by which any government agency determines eligibility for need-based services or financial assistance, including Medicaid.

No interest in the principal or income of this trust is to be anticipated, assigned, or encumbered, or subject to any creditor's claim or legal process, until it is actually received by the beneficiary. To such end, no part of the corpus of this trust, principal or undistributed income, is to be construed as part of the primary beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care, services, including residential care, by any public entity, office, department or agency of the State of New York, any other state or of the United States, or any other governmental agency.

C. The Trustee shall have no right to invade principal of the trust estate for the benefit of this Grantor.

1. The Grantor directs that the provisions of Section 7-1.6 of the Estates, Powers and Trusts Law of the State of New York, or any successor statute thereto, shall not be available to require any invasion of principal by the Trustee or any court.

2. The Grantor directs that the provisions of Section 11-2.4 of the Estates, Powers and Trusts Law of the State of New York, or any successor statute thereto, shall not be available to require any invasion of principal by the Trustee or any court.

3. The Grantor directs that the provisions of Section 11-2.3(b) of the Estates, Powers and Trusts Law of the State of New York, or any successor statute thereto, shall not be available to require any invasion of principal by the Trustee or any court.

4. The trustee shall have no right to make payments to third parties who are providing services to the grantor.

The Trustee shall be prohibited, except as may be required by law, from making any payments in reimbursement to any governmental entity which may have incurred expense for the benefit of the Grantor, and the Trustee shall not pay any obligation of the Grantor, which obligation is otherwise payable by any governmental entity or pursuant to any governmental program of reimbursement or payment. It is the Grantor's primary purpose in creating the Trust provided for in this Agreement to benefit the beneficiaries of the principal and to preserve the principal for the benefit of the remaindermen. This purpose shall be carried out in determining any questions which may arise between the interest of the income beneficiaries and the interest of the beneficiaries of the remainder.

The Grantor reserves a limited power of appointment to change the residuary beneficiaries of this Trust by designation to any one or more of the named children or their descendants of the Grantor or to a further trust for the benefit of one or more of the named children of grantor or their descendants. The Grantor also reserves the limited power to establish a special needs trust for any beneficiary who is to receive any asset under this Trust. This power shall be exercisable during the Grantor's lifetime by specific provisions in the Last Will and Testament of the Grantor and shall become irrevocable upon the Grantor's death.

#### ARTICLE SECOND

##### Distributions To Minors or Incompetents

In any case in which the Trustee is authorized or directed by any provision of this Agreement to pay or distribute income or principal to any person who shall be a minor or incompetent, the Trustee, in his sole discretion and without authorization of any court, may pay or distribute the whole or any part of such income or principal to such minor or incompetent personally, or may apply the whole or any part thereof directly to the health, education, maintenance or support of such minor or incompetent, or may pay or distribute the whole or any part thereof to the guardian, committee, conservator or other legal representative, wherever appointed, of such minor or incompetent or to the person with whom such minor or incompetent may from time to time reside, or in the case of a minor, may pay or distribute the whole or any part thereof to a custodian for such minor under any gifts to minors or transfers to minors act. The receipt of the person to whom any such payment or distribution is so made shall be a sufficient discharge therefor, even though the Trustee may be such person.

The Trustee, in his sole discretion, may defer payment or distribution of any or all income or principal to which a minor may be entitled until such minor shall attain the age of twenty-one (21) years, or to make such payment or distribution at any time and from time to

time; during the minority of such minor, holding the whole or the undistributed portion thereof as a separate fund vested in such minor but subject to the power in trust hereby given to the Trustee to administer and invest such fund and to use the income or principal thereof for the benefit of such minor as if such fund were held in trust hereunder. The Trustee shall pay and distribute any balance of such fund to such minor when such minor shall attain the age of twenty-one (21) years. Except as is hereinabove provided, if such minor shall die before attaining the age of twenty-one (21) years, the Trustee shall pay and distribute such balance to the executors, administrators or legal representatives of the estate of such minor, or if there shall be no such legal representative, to such persons as would have inherited the same and in the same proportions as they would have taken if such minor had died intestate; unmarried, the absolute owner thereof and a resident of the State in which such minor shall die domiciled.

The word "minor", wherever used in this Article SECOND, shall mean any person who has not attained the age of twenty-one (21) years.

#### ARTICLE THIRD

##### Irrevocability

This Agreement and the trusts created hereunder are irrevocable. The Grantor shall execute such further instruments as shall be necessary to vest the Trustee with full title to the property which is the subject of this trust.

#### ARTICLE FOURTH

##### Termination of Trusts

Notwithstanding anything to the contrary contained herein, if the principal of any trust created under this Agreement shall at any time be of a size which in the sole judgment of the Trustee shall make it inadvisable or unnecessary to continue such trust, the Trustee, in his absolute discretion, may pay and distribute the entire principal or such trust and all accrued and undistributed income to the remaindermen beneficiaries of such trust, discharged of trust, and such trust thereupon shall terminate. However no such distribution shall be made to the Grantor.

#### ARTICLE FIFTH

##### Powers of Trustee

In the administration of any property, real or personal, at any time forming a part of the trust fund, including accumulated income, and in the administration of any trust created hereunder, the Trustee, in

addition to and without limitation of the powers conferred on trustees under the New York Estates, Powers and Trusts Law, as amended or any successor thereto, or otherwise provided by law, shall have the following powers to be exercised in the absolute discretion of the Trustee, except as otherwise expressly provided in this Agreement:

- (a) To retain such property for any period, whether or not the same is of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such retention may have upon the diversity of investments.
- (b) To sell, transfer, exchange, convert or otherwise dispose of, or grant options with respect to, such property, at public or private sale, with or without security, in such manner, at such times, for such prices, and upon such terms and conditions as the Trustee may deem advisable.
- (c) To invest and reinvest in common or preferred stocks, securities, investment trusts, bonds and other property, real or personal, foreign or domestic, including any undivided interest in any one or more common trust funds, whether or not such investments be of the character permissible for investments by fiduciaries under any applicable law, and without regard to the effect any such investment may have upon the diversity of investments.
- (d) To render liquid the trust fund or any trust created hereunder in whole or in part, at any time and from time to time, and to hold cash or readily marketable securities of little or no yield for such period as the Trustee may deem advisable.
- (e) To lease any such property beyond the period fixed by statute for leases made by fiduciaries and beyond the duration of any trust created hereunder.
- (f) To join or become a party to, or to oppose, any reorganization, readjustment, recapitalization, foreclosure, merger, voting trust, dissolution, consolidation or exchange, and to deposit any securities with any committee, depository or trustee, and to pay any fees, expenses and assessments incurred in connection therewith, and to charge the same to principal, and to exercise conversion, subscription or other rights, and to make any necessary payments in connection therewith, or to sell any such privileges.
- (g) To vote in person at meetings of stock or security holders and adjournments thereof, and to vote by general or limited proxy with respect to any stock or securities.
- (h) To hold stock and securities in the name of a nominee.

without indicating the trust character of such holding, or unregistered or in such form as will pass by delivery, or to use a central depository and to permit registration in the name of a nominee.

(i) To pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of the trust fund or any trust created hereunder against others or of others against the same as the Trustee may deem advisable, including the acceptance of deeds of real property in satisfaction of notes, bonds and mortgages, and to make any payments in connection therewith which the Trustee may deem advisable.

(j) To borrow money for any purpose from any source, including any trustee at any time acting hereunder, and to secure the repayment of any and all amounts so borrowed by mortgage or pledge of any property.

(k) To possess, manage, insure against loss by fire or other casualties, develop, subdivide, control, partition, mortgage, lease or otherwise deal with any and all real property; to satisfy and discharge or extend the term of any mortgage thereof; to execute the necessary instruments and covenants to effectuate the foregoing powers, including the giving or granting of options in connection therewith; to make repairs, replacements and improvements, structural or otherwise, or abandon the same if deemed to be worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of real estate taxes, assessments, water charges and sewer rents, repairs, maintenance and upkeep of the same; to permit to be lost by tax sale or other proceeding or to convey the same for a nominal consideration or without consideration; to set up appropriate reserves out of income for repairs, modernization and upkeep of buildings, including reserves for depreciation and obsolescence, and to add such reserves to principal and, if the income from the property itself should not suffice for such purposes, to advance out of other income any sums needed therefor, and advance any income of the trust for the amortization of any mortgage on property held in the trust.

(l) To make distribution of the trust fund or of the principal of any trust created hereunder in kind, and to cause any distribution to be composed of cash, property or undivided fractional shares in property different in kind from any other distribution, without regard to the income tax basis of the property distributed to any beneficiary of any trust.

(m) To allocate receipts and disbursements of the trust fund between income and principal as the Trustee in his discretion may determine. However, this power shall not apply during the

lifetime of grantor. Net income available to the grantor shall be limited to interest, dividends and rent after payment of taxes, bank fees and accounting fees and other fees. Net income available for distribution to Grantor does not include the appreciated value of trust assets or capital gains from the sale of trust assets.

(n) To execute and deliver any and all instruments or writings which it may deem advisable to carry out any of the foregoing powers. No party to any such instruments or writings shall be obligated to inquire into its validity.

(o) To exercise all such rights and powers and to do all such acts and enter into all such agreements as persons owning similar property in their own right might lawfully exercise, do or enter into.

(p) To hold, retain, or convert any and all trust assets into non-income producing form.

No person who deals with any Trustee hereunder shall be bound to see to the application of any asset delivered to such Trustee or to inquire into the authority for, or propriety of, any action taken or not taken by such Trustee. This Agreement, however, shall not be construed to permit any person to deal with the trust fund for less than adequate consideration, to borrow without adequate interest or adequate security, to exercise any power of administration in a non-fiduciary capacity, or otherwise to act in such manner as to cause the Grantor to be treated as the owner of the trust fund or any part thereof.

Grantor grants specific authority to my Trustee to make gifts equal to the maximum annual per donee gift tax exclusion available under federal tax law to any child who is named as a beneficiary hereunder.

Notwithstanding anything to the contrary contained herein, during such time as any beneficiary of any trust created hereunder may be acting as a Trustee hereunder, such person shall be disqualified from exercising any power to make any discretionary distributions of income or principal to himself or herself, unless an equal gift or distribution is made to all other named children who are designated as beneficiaries in Article First, paragraph 4 of this Trust.

No Trustee shall be liable for acts or omissions in administering the trust fund or any trust created by this Agreement, except for that Trustee's own actual fraud, gross negligence or willful misconduct. If any Trustee becomes liable as Trustee to any other person who is not a beneficiary in connection with any matter not within the Trustee's control and not due to the Trustee's actual fraud, gross negligence or willful misconduct, such Trustee shall be fully indemnified and held harmless by the trust fund and any trust created hereunder giving rise to such liability, as the case may be, against and in respect of any damages that such Trustee may sustain, including without limitation

attorneys' fees.

The Trustee is authorized, but not required, to accept any property transferred to the Trustee by any person during such person's lifetime or by such person's Last Will and Testament. Any property so transferred by any person shall become a part of such trust or trusts created by this Agreement as such person shall direct and may be commingled with the other property in the trust or trusts to which such property has been added and shall be held, administered and disposed of as a part of such trust or trusts.

The Trustee, at any time and from time to time, may render to the Grantor an account of their acts and transactions as Trustee with respect to the income and principal of any trust created hereunder, from the date of creation of such trust or from the date of the last previous account of the Trustee. Such account shall be rendered in any form acceptable to the Grantor and the Trustee. The Grantor shall have full power and authority on behalf of all persons interested in such trust, whether such interest relates to income or principal, to settle and adjust such account. Such settlement shall be final and conclusive upon all persons so interested in such trust and the Trustee shall not be required to obtain judicial approval of the account or accounts so settled. Upon such settlement, the Trustee shall be fully and completely discharged and released from all further liability, responsibility and accountability for or with respect to their acts and transactions as set forth in the account or accounts so settled. Nothing herein, however, shall be construed as a limitation upon the right of the Trustee to seek judicial settlement of their account or accounts whether or not such account or accounts are so settled.

The Grantor intends that this Trust shall be a "grantor trust" under Internal Revenue Code Sections 671 and 675(4) and trust assets shall be deemed owned by Grantor for federal income tax purposes, during Grantor's lifetime. Accordingly Grantor reserves the right, exercisable at any time in my individual capacity and in Grantor's sole discretion, without the consent of the trustee or any other person, to reacquire any property held by the trust by substituting other property of an equivalent value at that time. Some or all of the income of the trust may be used to pay premiums on life insurance policies on my life.

#### ARTICLE SIXTH

##### Third Parties Not Responsible For Administration

This trust is created with the express understanding that each issuer, transfer agent or custodian of any securities held hereunder shall have no responsibility or liability to see to the proper administration of this trust. Upon the transfer of the right, title and interest in and to such account by any trustee hereunder, said issuer, transfer agent or custodian shall conclusively treat the transferee as the sole owner of such securities. Until the issuer, transfer agent or

custodian shall receive from some person interested in this trust written notice of any death or other event upon which a right to receive income or principal may depend, the issuer, transfer agent or custodian shall incur no liability for payment made in good faith to persons whose interest shall have been affected by such event. The issuer, transfer agent or custodian shall be protected in acting upon any notice or other instrument or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

#### ARTICLE SEVENTH

##### Appointment of Trustees

The Grantor hereby appoints her daughter, DONNA MARIE ALLISON as Trustee hereunder. In the event DONNA MARIE ALLISON shall cease for any reason to act as Trustee, Grantor appoints her daughter, DEBRA ANN HEITNER to act as first successor Trustee. In the event DEBRA ANN HEITNER shall cease for any reason to act as successor Trustee, Grantor appoints her son, FRANK A. VINCI to act as second successor Trustee.

The Trustee, at any time after qualifying to act as Trustee, shall have the right to designate a successor Trustee other than the Grantor by an instrument in writing, signed and acknowledged in counterparts, one of which shall be delivered to each income beneficiary hereunder, and one of which shall be delivered to the designated successor Trustee. This right to name a successor Trustee other than the Grantor shall supercede the provision naming a successor herein.

Either Trustee, at any time and from time to time, by instrument in writing signed and acknowledged, may delegate any or all of the rights, powers, duties, authority and privileges, whether or not discretionary, provided herein, to any other Trustee for such period or periods of time as may be designated in such written instrument; provided, however, that any such instrument shall be revocable at any time.

The Trustee shall have the right to resign at any time during the life of the Grantor by giving written notice to the Grantor and at any time after the death of the Grantor by giving written notice to the then income beneficiaries of each trust created hereby, or if none of the income beneficiaries of a trust are sui juris, to the persons sui juris who would be entitled to a share of the principal of such trust if it were then to terminate.

The term "Trustee" wherever used herein shall mean the trustee or trustees in office from time to time. Any such trustee shall have the same rights, powers, duties, authority and privileges, whether or not discretionary, as if originally appointed hereunder.

No bond or other security shall be required of any Trustee acting hereunder for the faithful performance of the duties of Trustee, notwithstanding any law of any State or jurisdiction to the contrary.



## ARTICLE EIGHTH

Simultaneous Death

If any beneficiary under this Agreement shall die simultaneously with any other person upon whose death such beneficiary shall become entitled to receive either income or principal under this Agreement, or in such circumstances as to render it difficult or impracticable to determine who predeceased the other; then for purposes of this Agreement such beneficiary shall be deemed to have predeceased such other person. The provisions of this Agreement shall be construed as aforesaid, notwithstanding the provisions of any applicable law establishing a different presumption of order of death or providing for survivorship for a fixed period as a condition of inheritance of property.

## ARTICLE NINTH

Decisions Of Trustee Are Conclusive

The determination of the Trustee in respect of the amount of any discretionary payment of income or principal from any trust established hereunder, and of the advisability thereof, shall be final and conclusive on all persons, whether or not then in being, having or claiming any interest in such trust, and upon making any such payment, the Trustee shall be released fully from all further liability or accountability therefor.

The right of any beneficiary to any payment of income or principal shall in every case be subject to any charge or deduction which the Trustee may make against the same under the authority granted to the Trustee by any law or by this Agreement.

## ARTICLE TENTH

Rights Of Beneficiaries Are Not Assignable

No disposition, charge or encumbrance on the income or principal of any trust established hereunder, or any part thereof, by any beneficiary thereof by way of anticipation shall be valid or in any way binding upon the Trustee. No beneficiary shall have the right to assign, transfer, encumber or otherwise dispose of such income or principal or any part thereof until the same shall be paid to such beneficiary by the Trustee. No income or principal or any part thereof shall in any manner be liable to any claim of any creditor of any beneficiary.

## ARTICLE TENTH

Changing the Trust Situs

After my death, the situs of any trust established herein may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this Trust.

If such consent is obtained, the beneficiaries shall notify my Trustee in writing of such change of trust situs, and, if necessary, designate a successor Trustee in the new situs.

## ARTICLE TWELFTH

Construction

This Agreement and all trusts created hereunder shall be construed and enforced in accordance with the laws of the State of New York, and the validity and effect of this Agreement shall be determined in accordance with the laws of the State of New York.

Wherever use in this Agreement and the context so requires, the masculine shall include the feminine and the singular shall include the plural, and vice versa.

The captions in this Agreement are for convenience of reference, and they shall not be considered when construing this Agreement.


If under any of the provisions of this Agreement any portion of the trust fund would be held in trust for longer than a date twenty-one years after the death of the Grantor and the beneficiaries hereunder, now in being; then upon such date the trust of such portion shall terminate and the principal, together with any accrued and unpaid income thereon, shall be paid and distributed to the person or persons then living who would have been entitled to receive the income therefrom had the trust continued, in the proportion in which they would have been so entitled.


## ARTICLE THIRTEENTH


Binding Effect


This Agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the undersigned Grantor and upon the Trustee acting hereunder.

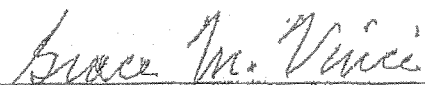
IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first above written.


  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
GRACE M. VINCI, Grantor

  
\_\_\_\_\_  
DONNA MARIE ALLISON, Trustee

11-25884/CQ

EXHIBIT A

TRUST FUND PROPERTY

STATE OF NEW YORK, COUNTY OF ROCKLAND

SS:

On May 12, 2011 before me, the undersigned, a notary public in and for said state, personally appeared GRACE M. VINCI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individuals acted, executed the instrument.

  
THOMAS F. O'CONNELL

Notary Public, State of New York

No. 31-8184710

Qualified in Rockland County

Commission Expires August 31, 2014

STATE OF NEW YORK, COUNTY OF ROCKLAND

SS:

On May 12, 2011, before me, the undersigned, personally appeared DONNA MARIE ALLISON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, that by her signature on the instrument, the individuals, or their person upon behalf of which the individual acted, executed the instrument.

  
THOMAS F. O'CONNELL

Notary Public, State of New York

No. 31-8184710

Qualified in Rockland County

Commission Expires August 31, 2014

STATE OF NEW YORK )  
COUNTY OF ROCKLAND ) SS.:

Each of the undersigned, individually and severally being duly sworn, deposes and says:

The within Trust was subscribed in our presence and sight at the end thereof by GRACE M. VINCI, the within named Grantor on May 12, 2011 at Pearl River, New York.

Said Grantor at the time of making such subscription declared the instrument so subscribed to be their Declaration of Trust.

Each of the undersigned thereupon signed their names as a witness at the end of said Trust at the request of said Grantor and in his/her presence and sight and in the presence and sight of each other.

Said Grantor was, at the time of so executing said Trust, over the age of 18 years and, in the respective opinions of the undersigned, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a Trust.

The Grantor in the respective opinions of the undersigned, could read, write and converse in the English language and was suffering from no defect of sight, hearing, or speech, or from any other physical or mental impairment which would affect their capacity to make a valid Trust. The Trust was executed as a single, original instrument and was not executed in counterparts.

Each of the undersigned was acquainted with said Grantor at such time and makes this affidavit at their request.

The within Trust was shown to the undersigned at the time this affidavit was made, and was examined by each of them as to the signature of said Grantor and of the undersigned.

The foregoing instrument was executed by the Grantor and witnessed by each of the undersigned affiants under the supervision of THOMAS F. O'CONNELL, attorney at law.

Severally sworn to before  
me, on May 12, 2011.

THOMAS F. O'CONNELL  
Notary Public, State of New York  
No. 31-8184710  
Qualified in Rockland County  
Commission Expires August 31, 2014

*Christine S. O'Neill*  
CHRISTINE S. O'NEILL

*Marianne Barry*  
MARIANNE BARRY

## SELF PROVING ACKNOWLEDGMENT AND AFFIDAVIT

I, GRACE M. VINCI, the Grantor, sign my name to this instrument this May 12, 2011, and being duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Declaration of Trust and that I, GRACE M. VINCI sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Grace M. Vinci  
GRACE M. VINCI

CHRISTINE S. O'NEILL and MARIANNE BARRY, the witnesses, sign our names to this instrument, and, being duly sworn, do each hereby declare to the undersigned authority that the Grantor signs and executes this instrument as her Declaration of Trust and that GRACE M. VINCI, signs it willingly and that each of us, in the presence and hearing of the Grantor, hereby signs this Declaration of Trust as witness to the Grantor's signing, and that to the best of our knowledge the Grantor is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Christine S. O'Neill  
CHRISTINE S. O'NEILL

Marianne Barry  
MARIANNE BARRY

STATE OF NEW YORK )  
COUNTY OF ROCKLAND) SS.:

Subscribed, sworn to and acknowledged before me by GRACE M. VINCI, the Grantor, and subscribed and sworn to before me by CHRISTINE S. O'NEILL and MARIANNE BARRY, the witnesses, on May 12, 2011.

Thomas F. O'Connell  
THOMAS F. O'CONNELL  
Notary Public, State of New York  
No. 31-8184710  
Qualified in Rockland County  
Commission Expires August 31, 2014



State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

CHRIS CHRISTIE  
Governor

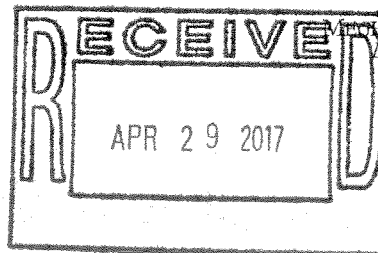
P.O. Box 712  
Trenton, NJ 08625-0712

ELIZABETH CONNOLLY  
Acting Commissioner

KIM GUADAGNO  
Lt. Governor

MICHAEL DAVEY  
Director

April 26, 2017



Fredrick P. Niemann, Esq.  
Juniper Business Plaza  
A3499 Route 9 North, Suite-1F  
Freehold, NJ 07728

Re: FINAL AGENCY DECISION

Grace Vinci  
OAL Dkt. No. HMA 17039-2016

Dear Sir/Madam:

Enclosed is the Final Agency Decision rendered in the above-captioned matter.

If you are dissatisfied with the decision, you have the right to seek judicial review by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, P.O. Box 006, Trenton, New Jersey 08625. A request for judicial review must be initiated within 45 days from the date of receipt of the decision.

Yours very truly,

Meredith Van Pelt, Esq.  
Office of Legal and Regulatory  
Liaison/DMAHS

MVP:go  
Enclosure

C: Lourdes Martin, FHL





State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712  
Trenton, NJ 08625-0712

CHRIS CHRISTIE  
Governor

ELIZABETH CONNOLLY  
Acting Commissioner

KIM GUADAGNO  
Lt. Governor

MEGHAN DAVEY  
Director

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

G.V.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES AND  
MONMOUTH COUNTY BOARD OF  
SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 17039-2016

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. No exceptions were filed.<sup>1</sup>

Procedurally, the time period for the Agency Head to file a Final Agency Decision  
in this matter is April 27, 2017, in accordance with an Order of Extension.

<sup>1</sup> Petitioner sent a letter on February 8, 2017 withdrawing her appeal "pending before the Office of Administrative Law". The matter was no longer pending at OAL and there is no provision to unilaterally withdraw a fair hearing as the Initial Decision had been issued.

Petitioner applied for Medicaid benefits in July 2016. At the time she disclosed a trust that she established in 2011. Petitioner is the grantor and the beneficiary. Her daughter is the trustee. It appears that she placed assets into the trust. The trust also owned real property that was sold in 2015 and the proceeds placed in the trust. Monmouth County determined that the trust was an available resource and denied the application as over the \$2,000 resource limit.

The Initial Decision determined that the assets in Petitioner's trust were available to her for purposes of determining Medicaid eligibility. The notion that one could hide assets in a trust so as to pass them to heirs while having Medicaid pay for care has long been appealing to individuals but an anathema to Congress.

Medicaid benefits are to be "last resource benefits" as they are intended to be for those persons whose resources are inadequate to secure quality medical care at their own expense. N.J.S.A. 30:4D-2. Although Medicaid is a program for the medically needy, individuals gained access to taxpayer-funded healthcare by shielding their assets in trusts while retaining the benefit of their wealth and the ability to pass that wealth to their heirs. Despite Congress' efforts, prior to 1986, many individuals made assets "unavailable" by placing them in irrevocable Medicaid qualifying trusts (MQTs), thus rendering the individuals eligible for Medicaid, while simultaneously preserving the assets for their heirs H.R.Rep. No. 265, 99th Cong., 1st Sess., pt.1, at 71 (1985). Disturbed by this practice, Congress, in enacting 42 U.S.C. § 1396(k), stated (1) Medicaid is a program designed to provide basic medical care for those lacking the resources to care for themselves, and (2) techniques that potentially enrich heirs at the expense of

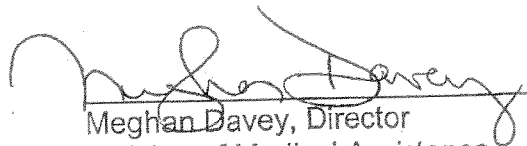
poor people are unacceptable. Id. at 71-72. To remedy the situation, Congress proposed a bill to treat as available assets all self-settled trusts, under which the settlor could receive benefits at the trustee's discretion. Id. at 72. The amount deemed available to such people is the **maximum amount** that a trustee **could**, in the **full exercise of discretion**, distribute to that grantor, whether from income or from principal. Whether the trust was established for the purpose of enabling the grantor to qualify for Medicaid is irrelevant. Id. (emphasis added).

So a trust containing the assets of the Medicaid applicant is a countable available resource regardless of the purpose for which the trust was established, regardless of whether the trustees have or exercise discretion under the trust, regardless of any restrictions on when or whether distributions may be made from the trust, and regardless of any restrictions on the use of distributions from the trust. Any funds that individual places in his or her own trust are still counted as that person's resources even when they are in a trust. In re A.N., 430 N.J. Super. 235, 244 (App. Div. 2013). See also N.J.A.C. 10:71-4.11(e) and 42 U.S.C.A. § 1396p(d)(1)-(3). Thus, I am satisfied that the Initial Decision correctly upheld the denial of Petitioner's Medicaid application for excess resources.

THEREFORE, it is on this <sup>25th</sup> day of APRIL 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services