



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
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JON S. CORZINE  
*Governor*

JENNIFER VELEZ  
*Acting Commissioner*

ANN CLEMENCY KOHLER  
*Director*

609-588-2656

**CERTIFIED**

March 22, 2007

Richard Miller, Esq.  
Landex Executive Center  
100 Misty Lane  
Parsippany, NJ 08054

Re: **FINAL AGENCY DECISION**  
John Sadlon  
OAL Dkt. No. HMA 4896-06S

Dear Mr. Miller:

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.

Any corrective action required by the decision will be promptly implemented by the appropriate agency staff.

Yours very truly,

Robert M. Liwacz, Esq.  
Office of Legal and Regulatory  
Liaison/DMAHS

RML:go

c Allen Hunter, FHL



At issue is the transfer penalty imposed on Petitioner due to transfers made to a trust. In 2002, Petitioner created an Irrevocable Trust naming his son K.S. as Trustee. The trust provided that J.S. would receive the annual net income generated by the trust. In 2003, J.S. transferred \$130,000 into the trust.

On November 24, 2005, the remaining assets in the trust were transferred by K.S. to himself. In February 2006, J.S. applied for Medicaid benefits. Middlesex County imposed a transfer penalty.

By Initial Decision dated February 7, 2007, the ALJ found that Middlesex County had properly imposed a penalty of ineligibility for the transfer. After reviewing the record, I disagree with the ALJ's findings regarding the imposition of a penalty on the corpus but FIND that a penalty based on the transfer of the stream of income caused by the termination of the trust must be assessed.

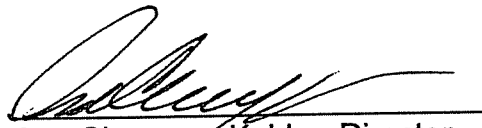
The proper imposition of a penalty on the transfer of otherwise available assets to the irrevocable trust began in January 2003 when J.S. gave up his right to the \$130,000. N.J.A.C. 10:71-4.11. Under the terms of the trust, the trustee must pay the yearly net income to J.S. At the trustee's discretion, he can distribute the entire principal to himself or his family. While Petitioner gave this power to his son previously, the son did not execute it until November 2005 when he ended Petitioner's right to the income stream. The date on which J.S.'s right to the income was foreclosed creates a transfer penalty, albeit a minimal one. See SMM §§ 3257.B.3 and 3259.6.B.

THEREFORE, it is on this 21<sup>st</sup> day of MARCH 2007,

ORDERED:

That the Initial Decision in this matter is hereby REVERSED regarding the penalty on the corpus of the trust; and

That the matter is remanded to Middlesex County to determine the penalty caused by the transfer of the income stream from the trust.

A handwritten signature in black ink, appearing to read 'Ann Clemency Kohler', written over a horizontal line.

Ann Clemency Kohler, Director  
Division of Medical Assistance  
and Health Services