



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

**CORRECTED INITIAL DECISION**

OAL DKT. NO. HMA 09571-19

AGENCY DKT. NO. n/a

**E.H.,**

Petitioner,

v.

**MIDDLESEX COUNTY BOARD  
OF SOCIAL SERVICES,**

Respondent.

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**Michael Heinemann, Esq.**, for petitioner (Michael Heinemann, P.C., attorney)

**Kurt Eichenlaub**, Supervisor, for respondent, appearing pursuant to N.J.A.C.  
1:1-5.4(a)(3)

Record Closed: December 11, 2019

Decided: January 2, 2020

BEFORE **JOSEPH A. ASCIONE**, ALJ:

**STATEMENT OF THE CASE and PROCEDURAL HISTORY**

On July 3, 2019, the Middlesex County Board of Social Services (MCBSS) denied petitioner's April 4, 2019, application for New Jersey's Family Care Aged, Blind and disabled Medicaid program. The reason, the applicant's income exceeded the \$2,000 asset limit, as a result of disallowed exclusions in the funeral trust. Petitioner has moved for summary disposition on the paperwork provided. The current contested case was transmitted to the Office of Administrative Law, where it was filed on July 17,

2019, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

### **FACTUAL DISCUSSION AND FINDINGS**

There is no factual dispute regarding the events which transpired. I **FIND** the following as **FACT**:

Petitioner, a seventy-eight-year-old female, receives \$1,471.50 in monthly social security benefits, her checking account on April 1, 2019, contained \$1,991.78. Her burial agreement, is illegible, and cannot be confirmed as complying with the requirements of the law, it also contains impermissible funeral expense amounts, including \$595 in expenses for items related to religious clergy, organist and memorial service expenses which are not acceptable funeral expenses pursuant to Med-Com 18-08. This placed her over eligibility for Medicaid benefits. The question is whether these nominal expenses contained in the funeral trust should be considered as assets of the applicant.

### **LEGAL ANALYSIS AND CONCLUSION**

Petitioner argues acceptable funeral expense should include the religious services for the church, priest and organist, as well as a catch all expense of memorial service. The MCBSS rejected \$595 of these expenses. Added to the applicant's checking account of \$1,991.78, applicant exceeded the Medicaid asset limitation of \$2,000. The MCBSS relies on Med-Com 18-08. Reviewing 42 U.S.C. 1396(p)(d)(3)(B)(II), this tribunal understand amounts included in the irrevocable funeral trust, if valid, are considered transfers to persons other than the applicant, and are deemed a transfer within the look back period. Petitioner argues the look back rules should be applied. The tribunal has interest in this argument. However, the tribunal cannot accept the documentation provided for the funeral trust, i.e., the tribunal cannot ascertain whether the applicant has properly entered into a funeral trust, and whether the funeral home has properly filed and deposited the funds with the State of New

Jersey. The tribunal attempted to confirm on the State website the contract number with the social security number of the applicant, and it could not be confirmed. Accordingly, the tribunal cannot determine if the applicant's funeral director has deposited the funds or whether petitioner, due to error on the part of the funeral director has access to the \$595, or the entire funds; therefore, the tribunal cannot confirm whether the amounts should be included.

This tribunal's understanding of the common law is that exemptions are "narrowly construed" against those seeking to obtain the benefits of exclusion. The United States Supreme Court has also emphasized that the corollary to the Internal Revenue Code § 61's broad construction is the "default rule of statutory construction that exclusions from income must be narrowly construed." U.S. v. Burke, 504 U.S. 229, at 248 (1992). "Exemptions, exclusions, and other provisions treating income as nontaxable occur as a matter of legislative grace and should remain strictly construed." De Aycardi v. Commissioner, T.C. Memo. 1997-308, July 3, 1997, (74 T.C.M. CCH 15). "A taxpayer is entitled to an exclusion only if there is clear provision for the favorable tax treatment." 2011 GLAM 004, (I.R.S. September 27, 2011).

Accordingly, I **CONCLUDE** petitioner has failed to demonstrate, by a fair preponderance of the evidence, he is entitled to the relief sought, and the summary disposition motion and petition is **DENIED**.

### **ORDER**

For the reasons stated above, I hereby **ORDER** that petitioner's application be **DENIED**. The action of the Board of Medical Assistance and Health Service and the Middlesex County Board of Social Services 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 2, 2020

\_\_\_\_\_  
DATE

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**JOSEPH A. ASCIONE, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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**APPENDIX**  
**WITNESSES**

**For Petitioner:**

None

**For Respondents:**

None

**EXHIBITS**

**Petitioner**

P-1 Moving papers and Exhibits

**Respondent**

R-1 April 22, 2019 Medicaid Application

R-2 MCBSS May 17, and June 7, 2019, Verification Request Letters

R-3 MCBSS June 25, 2019, Denial Letter