

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: January 9, 2017]

CATHERINE T. MACHUNIS

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VS.

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C.A. No. PC 2016-0613

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RHODE ISLAND DEPARTMENT OF  
HUMAN SERVICES, MELBA DEPENA  
AFFIGNE, DIRECTOR

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**DECISION**

**TAFT-CARTER, J.** The matter before the Court is an appeal from a decision of the Department of Human Services (DHS) affirming the denial of Catherine T. Machunis’ (Mrs. Machunis) application for Medical Assistance. The DHS Hearing Officer found that Mrs. Machunis does not qualify for Medical Assistance benefits because the value of the Trust Indenture (Trust) exceeds the \$4000 resource limit set forth in the DHS Medical Assistance Policy Manual. Mrs. Machunis requests that this Court reverse the decision of the DHS Appeals Office; remand the matter to the DHS Appeals Office for entry of a decision granting the appeal; or allow Mrs. Machunis to qualify for Medical Assistance as of December 1, 2014. For the reasons set forth below, this Court affirms the DHS decision. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

**I**

**Facts and Travel**

Mrs. Machunis applied for Long Term Care with the DHS in December of 2014. (Admin. Hr’g (Hr’g) Decision 4, Jan. 19, 2016). The application, known as a DHS-2 Statement of Need, requires an applicant to set forth all assets held individually or in a trust. The application was

completed and it documented that Mrs. Machunis was the beneficiary of a Trust executed on August 29, 1991. (Trust 1, Agency Ex. 9). The Trust held certain assets, including bank accounts. DHS ruled the assets held in the Trust totaled \$78,149.57. (Hr'g Decision 4). On September 9, 2015, DHS sent a notice denying Mrs. Machunis' application for Medical Assistance benefits because the resources available to her were in excess of the DHS resource limit of \$4000. (Hr'g Decision 4; Agency Ex. 4, Denial Notice).

Following the Agency's notice of denial, Mrs. Machunis filed a timely request for a formal hearing (Request for a Hearing, Oct. 7, 2015, Agency Ex. 1). A hearing was convened on December 3, 2015 (Hr'g Decision 4). The issues discussed at the hearing concerned the following three sections of the Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR): **0382.05.50 Trust Established Prior to 8/11/93**; **0382.50.05.05 Evaluating a Medicaid Qualifying Trust**; and **0382.50.15 Trust Evaluation Process**. The issue before the Hearing Officer was whether the Trust should be counted as a qualifying resource in determining Mrs. Machunis' eligibility for Medical Assistance.

Mrs. Machunis appeared through her counsel and presented testimony. (Hr'g Transcript (Tr.) 1, Agency Ex. 15). DHS representatives also appeared at the hearing. Id. at 2. DHS presented evidence that the Trust is a Medicaid Qualifying Trust established before August 11, 1993; the amount available for distribution to Mrs. Machunis from the principal is a resource; and, the amount available to Mrs. Machunis as income is the amount that could have been distributed to the beneficiary from the income. Id. at 9. Mrs. Machunis' sole dispute with DHS was the consideration of any money held in the Trust as a countable resource. Id. at 14, 15.

Evidence was submitted to the Hearing Officer by Mrs. Machunis. The evidence included a copy of a letter from Navigant Credit Union listing three accounts that are associated with Mrs.

Machunis' Trust, and copies of banking statements that detail interest accrued and notice of certificate of maturity. Other exhibits included copies of the Medical Assistance denial notice, the Trust, a Quit-Claim Deed, and a copy of the response from DHS legal counsel to the Long Term Care Administrator.

The Trust authorizes the Trustee to pay for the needs and expenses of Mrs. Machunis during her lifetime. (Trust 3, Agency Ex. 9). The Trust further provides, in the event that Mrs. Machunis becomes physically or mentally disabled due to an illness, that the Trustee has the sole discretion to distribute the amount that is deemed best for her care, support, and education. Id. at 3, 4-5. Upon the death of Mrs. Machunis, the Trustee would settle all estate expenses and make equal payments of \$5000 to each of Mrs. Machunis' three grandchildren. Id. at 4.

Following the hearing, the Hearing Officer denied Mrs. Machunis' request for relief based on her finding that the Trust assets are a countable resource in excess of the resource limit of \$4000. (Hr'g Decision 5, 6). Prior to making her determination, the Hearing Officer reviewed the testimony of DHS and Mrs. Machunis' attorney. Id. at 4. The Hearing Officer also analyzed the Trust, Mrs. Machunis' Medical Assistance denial notice, DHS Senior Legal Counsel's referral, and MCAR 0382.50.05 and 0382.50.05.05. Id. In doing so, the Hearing Officer concluded that DHS was correct in determining that Mrs. Machunis was ineligible because the assets held in her Trust were over the resource level for Medical Assistance. Id. at 6.

After review of MCAR 0382.50.05, the Hearing Officer established that the MCAR supported the proposition that a trust established prior to August 11, 1993 is considered a Medicaid Qualifying Trust, may be irrevocable or revocable, and does not have use limitations on the funds. (Hr'g Decision 5). The Hearing Officer noted that MCAR 0382.50.05 establishes the procedure to properly evaluate a Medicaid Qualifying Trust when determining Medical

Assistance eligibility. Id. Specifically, the Hearing Officer found that the maximum amount which the Trustee may distribute from a Medicaid Qualifying Trust is to be counted as an available resource. The maximum amount is the amount the Trustee could disburse if the Trustee exercised his or her full discretion under the terms of the Trust. The Hearing Officer further noted that under a Medicaid Qualifying Trust, distributions are available to an individual who established the Trust, whether or not the distributions are actually made. Id. Therefore, the Hearing Officer concluded that the Trustee had the full authority to disburse the assets held in the Trust to Mrs. Machunis. Id.

The Hearing Officer further noted that the Trust authorizes the Trustee to “generally do all things in relation to the Trust Estate which the Settlor could do if living and this Trust had not been created.” Id. Although Mrs. Machunis’ attorney argued that the Trust was not created to allow discretion to give money to Mrs. Machunis but to withhold money, the Hearing Officer disagreed. Id. at 6. Rather, the Hearing Officer found that even though the Trust gives the Trustee discretion to withhold money, it also does not prevent the Trustee from giving money to Mrs. Machunis for her benefit. Id. Therefore, the Hearing Officer denied Mrs. Machunis’ request for relief and deemed Mrs. Machunis ineligible for Medical Assistance. Id.

Mrs. Machunis filed a timely appeal from the Hearing Officer’s decision to this Court pursuant to § 42-35-15(b). On appeal, Mrs. Machunis argues that the Hearing Officer’s decision is in violation of constitutional or statutory provisions; is in excess of their statutory authority; is made upon unlawful procedure; is affected by other error or law; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or is arbitrary or capricious or characterized by abuse of discretion, or is a clearly unwarranted exercise of discretion. Additionally, Mrs. Machunis contends that since she is a Long Term Care patient and is disabled,

the Trustee is limited to distributions only from the principal income and cannot distribute any portion of the principal to her or for her benefit. Therefore, Mrs. Machunis argues the assets held in her Trust are not countable resources when determining Medical Assistance eligibility

In response, DHS contends that the Hearing Officer properly denied Mrs. Machunis' application for Medical Assistance. DHS argues that Mrs. Machunis is the beneficiary of a revocable trust that was created prior to August 11, 1993. Further, DHS avers that Mrs. Machunis presented no evidence that her Trust falls under any exceptions that would render the assets in her Trust as not countable. Therefore, DHS argues that the proceeds of the Trust are countable resources under the MCAR and Mrs. Machunis is ineligible for Medical Assistance benefits.

## II

### Standard of Review

The court reviews a contested administrative decision pursuant to the Administrative Procedures Act, § 42-35-15(g). This section provides that:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affect by other error or law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15(g).

Upon reviewing an agency decision, this Court is limited to “an examination of the certified record to determine if there is any legally competent evidence therein to support the agency’s decision.” Johnston Ambulatory Surgical Assocs. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126 (R.I. 1992)). It has been established that substantial evidence is defined as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion [and] means an amount more than a scintilla but less than a preponderance.” Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (citations omitted). When reviewing an agency decision, the court “shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” Rocha v. State Pub. Utils. Comm’n, 694 A.2d 722, 725 (R.I. 1997). Accordingly, the Court may “reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.” Baker v. Dep’t of Emp’t and Training Bd. Of Review, 637 A.2d 360, 362 (R.I. 1994) (quoting Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981)). Nevertheless, this Court is allowed to conduct a de novo review of determinations of law made by an agency. Arnold v. R.I. Dep’t of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003) (citing Nolan, 755 A.2d at 805). However, this Court must accord great deference to an agency’s interpretation of “a statute whose administration and enforcement have been entrusted to the agency.” Town of Richmond v. Rhode Island Dep’t of Env’tl. Mgmt., 941 A.2d 151, 157 (R.I. 2008) (quoting Murray v. McWalters, 868 A.2d 659, 662 (R.I. 2005)).

### III

#### Discussion

##### A

#### **Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR)**

The Rhode Island Medicaid program is a state and federal health care program that provides publicly funded health coverage to low-income individuals and families, adults without dependent children, elders, and persons living with disabilities. R.I. Admin. Code 39-3:0300.01. The Medical Assistance program was established through G.L. 1956 § 40-8 to provide medical care and treatment to those who do not have the income and resources for healthcare. Sec. 40-8-1(b), (c). DHS is the agency that has authority under § 42-7.2-2(6) to administer and regulate the Medical Assistance program. To receive federal funding, DHS is required to conform to the federal Social Security Act, 42 U.S.C. § 1396 et seq., by promulgating rules, regulations and fee schedules. Sec. 40-8-13.

The issue of whether assets in a trust are countable resources is a question of law. Chenot v. Bordeleau, 561 A.2d 891, 893 (R.I. 1989). This Court will provide great deference to an administrative agency when it interprets ““a statute whose administration and enforcement have been entrusted to the agency.”” Id. (quoting Town of Richmond, 941 A.2d at 157). Therefore, since DHS is the agency that is responsible for the administration and enforcement of the Medical Assistance program, this Court will give great deference to the DHS’ interpretation of the MCAR. See Chenot, 561 A.2d at 893; see also R.I. Admin. Code 39-3:0300.01. In the instant case, the Hearing Officer interpreted the Trust to be a Medicaid Qualifying Trust and therefore a countable resource. See Hr’g Decision 6.

MCAR 0382.50.05<sup>1</sup> and 0382.50.05.05 govern Trusts established prior to August 11, 1993. Under MCAR 0382.50.05 and 0382.50.05.05, it is irrelevant whether a Medicaid Qualifying Trust is a revocable or irrevocable trust.<sup>2</sup> The determining factor is the amount available for distribution to the beneficiary.<sup>3</sup> Any payments made from the trust income or

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<sup>1</sup> Under MCAR 0382.50.05, a trust made prior to 1993 is determined to be a Medicaid Qualifying Trust when it:

“Was established prior to 8/11/93 by the individual, the individual’s spouse or legal guardian, or the individual’s legal representative acting on his/her behalf;

“Was established through a method other than a will;

“Names the individual as a beneficiary;

“Gives a trustee any discretion to disburse funds from the trust to or for the benefit of the individual; and

“Was created for a purpose other than to qualify for Medicaid.”

<sup>2</sup> MCAR 0382.50.05 further provides:

“Medicaid Qualifying Trusts may be irrevocable or revocable. There are no “use” limits on the funds in a Medicaid Qualifying Trust; trusts established by the individual to pay for special needs (e.g., medical, rehabilitative, or educational) may be considered Medicaid Qualifying Trusts in so far as they meet the criteria above.”

<sup>3</sup> MCAR 0382.50.05.05 provides:

“In the determination of financial eligibility and in the post-eligibility treatment of income, count as available to the applicant the maximum amount which the trustee(s) may distribute from a Medicaid Qualifying Trust. The maximum amount is the amount that the trustee could disburse if (s)he exercised his/her full discretion under the terms of the trust.”

“Distributions are considered available to the individual establishing the trust whether or not the distributions are actually made or the trustee(s) exercise their authority under the trust.”



principal are treated as income and are countable resources. See MCAR 0382.50.05.05. A Medicaid Qualifying Trust does not require a trustee to actually distribute any available funds. Id. Distributions are available for consideration even if a trustee does not exercise his or her authority. Id. The total amount of resources or income available to the beneficiary is the maximum amount that the trustee has the authority to distribute. Id. Thus, assets in a Medicaid Qualifying Trust that are available can be treated as countable resources when determining eligibility for Medical Assistance. Accordingly, the issue before the Court is whether the assets in the Trust are available as a countable resource.

## **B**

### **Trust as Applied to the MCAR**

A trust established after 1993 is determined to be countable resource depending on whether it is a support trust or a discretionary trust. Chenot, 561 A.2d at 893-94. A support trust requires that “the trust assets are considered resources of the applicant” because the trustee must use the trust income and/or principal for the beneficiary’s support and benefit as deemed necessary. Id. Alternatively, assets in a discretionary trust are not considered countable resource

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“The amount from the trust that is deemed to be available as a resource to the beneficiary is the maximum amount that could have been distributed to the beneficiary from the principal of the trust under the terms of the trust, provided the trustee exercised his full discretion under the terms of the trust to distribute the maximum amount to the beneficiary.”

“The amount from that trust that is deemed to be available as income to the beneficiary is the maximum amount that could have been distributed to the beneficiary from the income of the trust under the terms of the trust, provided the trustee exercised his full discretion under the terms of the trust to distribute the maximum amount to the beneficiary.”

because the trustee has “complete and uncontrolled discretion” to distribute the assets from the trust. Id. However, this determination for a trust established after 1993 is not the same determination for a trust established before August 11, 1993, also known as a Medicaid Qualifying Trust.

Although Rhode Island case law has not examined Medicaid Qualifying Trusts, other jurisdictions have interpreted similar Medicaid Qualifying Trust statutes. See Forsyth v. Rowe, 629 A.2d 379, 383 (Conn. 1993) (“[A] ‘[M]edicaid qualifying trust’ is a trust, or similar legal device, established . . . by an individual . . . under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual”); Strand v. Rasmussen, 648 N.W.2d 95, 105 (Iowa 2002) (“Both trust income and principal are ‘available’ resources. In evaluating the availability of the principal, the department considers . . . the maximum amount capable of distribution under a trust is deemed an available resource to the beneficiary, regardless of whether the trustee actually exercises his or her discretion”); Lebow v. Comm’r of Div. of Med. Assistance, 740 N.E.2d 978, 980 (Mass. 2001) (“[W]e interpreted the [Medicaid Qualifying Trust] statute to define what constitutes an MQT: ‘[T]hat is any trust established by a person (or that person’s spouse) under which that person may receive any payments. This general definition is qualified only by the requirement that the trustees must be permitted to exercise some discretion. . . .”).

Mrs. Machunis argues that the Trust assets are not countable resources when determining eligibility for Medical Assistance because the Trustee’s discretion is limited to the income and not the principal itself. Mrs. Machunis asserts that because she is disabled and in a Long Term

Care facility, provisions of Article THIRD<sup>4</sup> of the Trust are proven. Therefore, she contends that the assets in the Trust are not a countable resource.

DHS argues that the plain language and understanding of MCAR 0382.50.05 and 0382.50.05.05 is that assets in a trust established prior to August 11, 1993 are treated as countable resources because they are available to the applicant. DHS contends that Mrs. Machunis could have revoked her Trust at any time and used the money as needed and that it is irrelevant that the Trustee has discretion. Lastly, DHS argues that a Medicaid Qualifying Trust under MCAR 0382.50.05 can qualify for Medicaid if it meets an exception, such as the Trust being established for special needs.<sup>5</sup> However, DHS argues, Mrs. Machunis has not provided any evidence that the Trust was established for special needs.

Here, the first inquiry is to determine whether the Trust meets the plain language definition of a Medicaid Qualifying Trust. This Court finds that it does. First, the Trust is a Medicaid Qualifying Trust because Mrs. Machunis is the beneficiary of a trust that she established. See MCAR 0382.50.05<sup>6</sup>; Trust 1, Agency Ex. 9. See also Forsyth, 629 A.2d at 383 (interpreting a similar Medicaid Qualifying Trust statute and finding that a Medicaid Qualifying Trust is a trust that is established by an individual under which the individual may be the

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<sup>4</sup> “**THIRD**: During the lifetime of the Settlor, CATHERINE MACHUNIS, the Trustee shall hold the Trust Estate, invest and manage the same, receive and collect the income, if any, accruing therefrom and after paying therefrom all expenses of administration of this Trust, which in the judgment of the Trustee are properly chargeable against income, shall pay such portion or portions of the remaining or net income to the Settlor, together with such portion or portions of the principal as the Trustee may at any time, or from time to time deem proper for the health and general welfare of the said beneficiary. In the event of the disability of the beneficiary, the Trustee may pay such portions of the principal income of this Trust to said beneficiary or expend same for her benefit.” (Trust 3, Agency Ex. 9).

<sup>5</sup> See MCAR 0382.50.20 (stating exceptions to MCAR 0382.50.05 and 0382.50.05.05 are special needs trusts and pooled trusts).

<sup>6</sup> A Medicaid Qualifying Trust is a trust that was established by an individual and the trust names that individual as a beneficiary. See MCAR 0382.50.05.

beneficiary). Additionally, the Trust is a Medicaid Qualifying Trust because the Trust gives the Trustee discretion to disburse funds from the Trust to or for the benefit of Mrs. Machunis. See MCAR 0382.50.05; Trust 3, Agency Ex. 9. See also Lebow, 740 N.E.2d at 980 (interpreting a similar Medicaid Qualifying Trust and finding a MQT statute requires “only that a trustee have a ‘peppercorn’ of discretion to disburse trust assets to the grantor” and that there is discretion even when the grantor may receive payments in limited circumstances). Furthermore, the Trust establishes that the Trustee has the power to make distributions or divisions of principal or income in property held in the Trust. See Trust 2, Agency Ex. 9. Therefore, the Trustee is given sufficient discretion to disburse assets for the Trust to be considered a Medicaid Qualifying Trust.

Having found the Trust is a Medicaid Qualifying Trust, the next consideration is whether the assets in the Trust are available. The Trust gives the Trustee the authority to make distributions from the principal or the income for the health and well-being of Mrs. Machunis.<sup>7</sup> Id. at 3. Moreover, the Trust also authorizes, in the event that Mrs. Machunis is disabled, that the Trustee *may* provide principal income to Mrs. Machunis for her benefit.<sup>8</sup> Id. Clearly, the Trustee is given discretion involving distributions from the principal when necessary for the well-being of Mrs. Machunis. Thus, the distributions are not limited to the income. Even if the Trustee does not exercise such discretion, the fact that he retains the authority to do so is significant because the corpus of the Trust is available to Mrs. Machunis. Given that the Trustee

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<sup>7</sup> Article THIRD of the Trust states, “During the lifetime of the Settlor, CATHERINE MACHUNIS, the Trustee shall . . . pay such portion or portions of the remaining or net income to the Settlor, **together with such portion or portions of the principal** as the Trustee may at **any time**, or from time to time deem proper **for the health and general welfare of the said beneficiary.**” (emphasis added).

<sup>8</sup> Article THIRD of the Trust further provides, “In the event of the disability of the beneficiary, the Trustee may pay such portions of the principal income of this Trust to said beneficiary or expend same for his benefit.”

has discretion under the Trust to distribute funds from the Trust principal or income, the assets in the Trust are deemed available. See MCAR 0382.50.05.05; Trust 2, Agency Ex. 9. See also Lebow, 740 N.E.2d at 983 (“if there is *any* state of affairs, at *any* time during the operation of the trust, that would permit the trustee to distribute trust assets to the grantor, those assets will count in calculating the grantor’s Medicaid eligibility.”).

The decision of the Hearing Officer concluding that the amount that is deemed available is the maximum amount that the Trustee could distribute if he exercised his full discretion which, in this case, is the total excess amount of \$74,149.57, is not erroneous. Accordingly, under the MCAR, Mrs. Machunis’ Trust is a Medicaid Qualifying Trust and the assets, not including her home, are available as a countable resource. See MCAR 0382.50.05 and 0382.50.05.05.<sup>9</sup>

#### IV

#### Conclusion

After review of the entire record, this Court finds that the DHS decision is supported by reliable, probative, and substantial evidence and is not affected by error or law. The DHS decision is not arbitrary or capricious and does not constitute an abuse of discretion. Substantial rights of Mrs. Machunis have not been prejudiced. For the reasons above, this Court affirms DHS’s decision counting the assets in the Trust, excluding the house, as a countable resource when determining Medical Assistance eligibility. Counsel shall submit the appropriate judgment for entry.

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<sup>9</sup> Mrs. Machunis has also requested additional relief, in the event this Court should deny her agency appeal. Mrs. Machunis stated, “She seeks relief qualifying her for LTC benefits as of December 1, 2014 upon her payment to Grandview Center of \$74,149.57.” Finding this claim to be without merit, it is denied.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Catherine T. Machunis v. Rhode Island Department of Human Services, et al.

**CASE NO:** PC 2016-0613

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** January 9, 2017

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

**ATTORNEYS:**

For Plaintiff: Henry H. Katz, Esq.

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