

CAMDEN COUNTY BOARD OF SOCIAL SERVICES,
Petitioner,
v.
"M.L.",
Respondent.

Decided May 16, 1980

Initial Decision

SYNOPSIS

A local county welfare board terminated respondent's participation in the Food Stamp Program claiming that a \$5,000 auto accident settlement received by respondent's son should be counted as includable resources for the household thus raising its resources above the \$1,750 limit contained in *N.J.A.C. 10:87-7.13(a)2*.

The administrative law judge found that the funds under the settlement were placed in a trust fund maintained by the county surrogate under court order until the son would reach 21; that the principal of the trust had been invested and that the investments did not assist any business controlled by a family member; that no household member has the power to revoke the trust and that the trust arrangement was not likely to change during the time for which the respondent would be found eligible for food stamps.

Accordingly, the judge concluded that the trust was inaccessible to respondent within the meaning of *N.J.A.C. 10:87-4.8* and thus should not be included as a financial resource of the household. Thus, the termination of food stamp benefits were reversed.

GOLDBERG, ALJ:

Respondent seeks relief from the administrative determination of the Camden County Board of Social Services terminating participation in the Food Stamp Program, pursuant to *N.J.A.C. 10:87-7.13(a)2*. The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A. 52:14F-1 et seq.*

After notice to all parties a hearing was held on May 5, 1980 at the Camden County Court House, Camden, New Jersey before Administrative Law Judge Bernard Goldberg. At issue is the agency's decision terminating eligibility because respondent is said to have a nonexcluded resource in excess of the program limit. The agency relied upon *N.J.A.C. 10:87-7.13(a)2* which in pertinent part requires that:

Participation in the program shall be denied or terminated if the total

value of the household's nonexcluded resource exceeds \$1,750

The facts of the case are not disputed. Respondent's six year old son received an auto accident settlement in December 1979 of \$5,663. The agency contends the funds from this settlement are a nonexcluded resource in excess of the program limit making the household ineligible for the program. On the basis of this contention the agency by letter of March 4, 1980 identified the resource as a trust fund maintained by the County Surrogate until the child attains 21 years of age and informed respondent that she would have to ask the court to release funds for her son's needs. Testimony of the agency's representative indicated that experience has shown that most trust funds in Camden County can be invaded when need is demonstrated. When such trusts are created they are classified as revocable and are, therefore, nonexcluded resources for Food Stamp Program purposes.

Respondent testified that she had gone to court on April 3, 1980 to obtain funds from the trust. On April 29, 1980 the Surrogate was ordered by the court to pay petitioner \$50 per month out of the trust's proceeds to meet her son's needs. Thus, while the trust can be invaded probably to the extent of its earnings, *i.e.*, 11%, at least two questions remain to be resolved:

1. May the principal be used?

2. May more than \$50 per month be considered available to the household?

Failure of the agency to affirmatively answer these questions requires a fair and prudent person to conclude that the trust for the benefit of respondent's son be classified as irrevocable and, therefore, excludable within the meaning of *N.J.A.C. 10:87-4.8* which defines irrevocable trusts as:

Any funds in a trust or transferred to a trust, and the income produced by that trust shall be considered inaccessible if all of the following criteria apply:

(a) *Controlled by the Trustee* – The trust is under the control and management of an institution, corporation or organization (the trustee) which is not under the direction or ownership of any household member;

(b) *Trustee Acts in a Fiduciary Capacity* – The trustee uses the funds solely to make investments on behalf of the trust or to pay educational expenses of any person named by the household creating the trust;

(c) *Trust Investments* – The trust investments do not directly involve or assist any business or corporation under the control, direction, or influence of a household member;

(d) *Trust Not Likely to Cease* – The trust arrangement is not likely to cease during the certification period; and

(e) *Power to Revoke* – No household member has the power to

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revoke the trust arrangement or change the name of the student beneficiary during the certification period.

The trust at issue is maintained by the Surrogate and controlled by the court. The principal has been invested and the investment does not assist any household member (except for the court ordered \$50 per month). The trust is not likely to cease during the certification period and no household member has the power to revoke the trust.

Based upon the foregoing, I **FIND**:

1. Respondent's six year old son received an auto accident settlement of \$5,663 in December 1979.

2. The funds were ordered placed in trust by the court until the boy reaches age 21.

3. The court on a request by respondent ordered the County Surrogate to pay to respondent \$50 per month out of the trust's proceeds to meet her son's needs.

4. The trust is controlled by the court.

5. No household member has the power to revoke the trust.

Based upon the facts adduced at the hearing and pursuant to the regulations previously cited, I **CONCLUDE** that the trust of respondent's son is irrevocable and as such is an excluded resource.

Therefore, the action of the Camden County Welfare Board terminating respondent Food Stamp Program participation because of excess resources is **REVERSED**.

After reviewing this Initial Decision, the Division of
Public Welfare on June 16, 1980 issued the following Final
Decision:

The Initial Decision in this case is accepted and incorporated herein. Accordingly, the proposed action to terminate participation in the Food Stamp Program is reversed.