

account was money left to the petitioner's husband by his sister; and that when the petitioner's husband died, the petitioner placed the money in this account to be held "in trust" for the children. It was not explained where the remaining \$5,971.30 of the initial deposit came from.

The evidence also shows that the petitioner made several sizeable withdrawals from this account between 1981 and 1991.³ The petitioner's son admitted that the petitioner used this money for her own benefit, but stated that she had the "permission" of her children to do so.

However, other than the C.D. passbook, itself, the petitioner produced no credible evidence (e.g., a trust instrument or a will from either her husband or sister-in-law) to support a finding that the petitioner's children ever had a "vested interest" in any of the money in the C.D.

The hearing officer specifically advised the petitioner (and gave her attorney additional time) to produce some documentary evidence of the petitioner's claim. She neither did so nor offered an explanation as to why this would not be available. At best, the testimony of the petitioner's son and the "affidavit" of the petitioner (if admissible) are vague and inconclusive. Because their allegations are so patently self-serving, in the absence of any objective corroboration whatsoever they cannot be deemed sufficient to carry the petitioner's burden of proof in this matter.

It cannot, therefore, be found either that any of the money initially deposited in the C.D. account was not the petitioner's or that the petitioner does not continue to have legal access to this money at her discretion.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid resource maximum is \$2,000.00. Medicaid Manual (MM) § M 230, Procedures Manual § P-2420 C.

Regarding "Trusts", MM § M 237 provides as follows:

Trusts (or similar legal devices) which have been established by an applicant/recipient or his/her spouse with the applicant/recipient as the beneficiary, are counted only to the extent that the trustee could disburse the assets if he/she exercised his/her full discretion under the terms of the trust. The assets are counted whether or not the trustee exercises his/her full discretion. Amounts actually distributed under the terms of the trust are counted as income and/or resources under the regular rules of the Medicaid program. An exception to the rule described above is a trust which was established by the will of the applicant/recipient's deceased spouse. In this instance the assets of the trust shall only be counted as available to the applicant/recipient if the terms of the trust permit the trustee to use the assets for the applicant/recipient's maintenance and/or medical needs.

Trusts established by persons other than the applicant/recipient or his/her spouse are counted as a resource if the terms of the trust permit the applicant/recipient to revoke the trust or to have access to the trust without trustee intervention.

As noted above, there is no credible evidence that at the time the petitioner opened the C.D. any of the money she deposited was not her own. This being the case, the law is clear as to the status of such an account. In Reynolds v. Shambeau, 140 Vt. 317, 320, (1981) the Vermont Supreme Court

held:

Savings account trusts created by a person's deposit of her own money in her own name as trustee for another, standing alone, do not establish an irrevocable trust during the lifetime of the depositor, but rather a "tentative trust" revocable at the will of the depositor and terminable by the death of the beneficiary prior to the death of the depositor. Annot., 64 A.L.R.3d 221 (1975); Restatement (Second) of Trusts § 58 (1959). The "tentative trust" does not vest absent an unequivocal act or declaration by the depositor-trustee completing a gift of the money to the beneficiary, and thereby making the gift irrevocable. In re Totten, 179 N.Y. 112, 71 N.E. 748 (1904). The burden is on the named beneficiary to prove a completed trust for his benefit. Tyree v. Ortiz, 127 Vt. 177, 184, 243 A.2d 774, 778 (1968); Methodist Church of Sandgate v. First National Bank of North Bennington, 125 Vt. 124, 129, 211 A.2d 168 (1965); Warner v. Burlington Federal Savings & Loan Association, 114 Vt. 463, 471, 49 A.2d 93, 97 (1946).

The evidence shows that the petitioner has withdrawn sizeable portions of this money over the last ten years for her own use. There is no credible evidence that she cannot freely and legally continue to do so. The Department's decision is, therefore, affirmed.

FOOTNOTES

¹The petitioner remained in the nursing home only two months. There is no indication that she is mentally incompetent.

²The petitioner did not appear at the hearing but submitted an "affidavit" afterwards (objected to by the Department). One of the petitioner's adult children appeared at the hearing with an attorney and offered oral testimony.

³The bankbook shows the following withdrawals:

October, 1981	-	\$1,000.00
September, 1985	-	\$4,000.00
March, 1988	-	\$3,000.00

September, 1989	-	\$3,000.00
March, 1991	-	\$4,000.00
October, 1991	-	\$3,000.00

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