

the trust. Apparently, all the distributions were to family members other than the petitioner. However, there is no dispute that the petitioner retained the legal and physical ability to revoke the trust at any time before the trust was depleted.

5. The petitioner concedes that any assets from the trust that were distributed to other family members were subject to the transfer of resource provisions in the regulations--i.e., a penalty period of Medicaid ineligibility is imposed determined by the amount of the assets that were transferred (see *infra*). The petitioner argues, however, that the effective date of the transfer occurred in October, 1998, when she created the trust, and that a penalty period of 5.6 months should have been imposed at that time based on the entire trust amount of \$22,000. Thus, the petitioner maintains, she should have become eligible for Medicaid sometime in April, 1999.

6. The Department's position is that as long as the assets remained in the revocable trust they were considered an available resource to the petitioner; and that the transfer penalties were imposed at the time the trustee actually distributed the assets of the trust to individuals other than the petitioner, with the length of the penalties being determined by the amounts then distributed.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual § M237.2, which applies to trusts created after January 1, 1994, includes the following provision:

Revocable trusts are treated as follows:

- the principal of the trust shall be counted as a resource,
- payments from the trust to or for the benefit of the individual shall be counted as income, and
- any other payments from the trust shall be considered a transfer of assets.

Medicaid Manual § M416, the regulation governing transfer of assets, provides, in part:

Note: The term assets includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or his/her spouse is entitled to but does not receive because of action by:

- the individual or his/her spouse;
or
- a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or his/her spouse; or
- by any person, including any court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

Medicaid Manual § M416.23, which governs the penalty

periods for transfers of assets made after January 1, 1994, provides:

The period of restricted coverage begins the first day of the first month during or after which assets were transferred and which does not occur in any other period of restricted coverage - i.e. penalty periods for transfers occurring in different months run consecutively rather than concurrently.

Clearly, under the above regulations, assets in a revocable trust are treated as resources unless and until they are transferred to someone other than the Medicaid recipient, and transfer of assets penalties do not begin running until the month in which the assets in the trust are actually distributed to someone else. In this case, the petitioner had access to all the money in her trust until the time the actual distributions were made. Therefore, the Department correctly determined that the assets in the trust were a resource to the petitioner until the time they were actually distributed to other family members; and that it was not until the time the amounts from the trust were actually distributed that the transfer of assets penalties began running.

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