

FEB-09-2005 11:01

NYS DOH/BPMC

518 4732430 P.02



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

February 2, 2005

Ms. Iris R. Jimenez-Hernandez
Executive Deputy Director
Human Resources Administration
Medical Insurance & Community Services Administration
330 West 34th Street, 5th Floor
New York, New York 10001

Dear Ms. Hernandez:

This is in response to your letter of October 26, 2004 requesting clarification of the proper treatment of income placed in a pooled trust for purposes of determining Medicaid eligibility.

A pooled trust is a trust which meets the criteria set forth in Section 1917(d)(4)(C) of the Social Security Act (the Act) and Social Services Law Section 366(2)(b)(2)(iii). It contains the assets of a number of disabled individuals, and is managed by a nonprofit organization that maintains separate accounts for each such individual. The principal and income of a pooled trust account are not counted in determining Medicaid eligibility, and transfers of assets into such a trust are not penalized, unless they are made after the disabled individual becomes 65 years of age.

The statutory language describes two types of exception trusts. The first is specifically required to have been created when the disabled individual was under the age of 65. The second, the pooled trust, has no such age limitation, indicating that the intent of the law is to exempt pooled trusts even if they were established when the disabled individual was over age 65.

Social Security Administration Ruling SSR 03-3p, Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older, prescribes the method used to determine disability for individuals over age 65. We are seeing an increasing number of senior citizens establishing pooled trusts. Many of these individuals are not in receipt of Social Security Disability benefits and, therefore, require a separate disability determination. In light of this, effective immediately, disability determinations for all individuals who are over age 65 and are establishing a pooled trust are to be performed by the State Disability Review Team in Albany. A complete packet for disability

FEB-09-2005 11:01

NYS DOH/BPMC

518 4732430

P.03

determination, containing a completed and signed DSS-1151 interview form, all appropriate portions of the DSS-486T, and all pertinent medical evidence, must be submitted to the State Disability Review Team in Albany. Complete packets are to be sent to the following address:

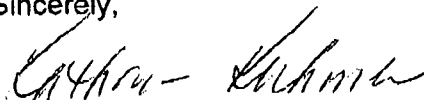
New York State Disability Review Team
Division of Consumer and Local District Relations
NYS Department of Health
Office of Medicaid Management
One Commerce Plaza, Room 803C
Albany, New York 12260

The State Disability Review Team will perform the disability determination and send the completed Disability Review Team Certificate (DSS-639) to the district along with the medical evidence package. If the individual is determined disabled, any of the disabled individual's income placed in his or her pooled trust account must be disregarded in determining the disabled individual's eligibility for Medicaid. It should be noted that this disregard does not apply under chronic care budgeting.

An Office of Medicaid Management/Informational Letter (OMM/INF) will be issued in the near future to provide districts with explicit instructions for submission of a disability determination package for an individual who is over 65 years of age. Please note that we cannot approve use of the M11Q (Medical Request for Home Care) as a substitute for the DSS-486T, DSS-1151 or the disability review.

If you have any questions about pooled trusts for individuals over 65 years of age, please contact Wendy Butz, of my staff, at (518) 473-0955. If you have questions regarding the submission of a packet for disability determination, please contact Mary Jane Conroy, of my staff, at (518) 473-5379.

Sincerely,



Kathryn Kuhmerker
Deputy Commissioner
Office of Medicaid Management