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NJ Court Ruling that NJ May Count Promissory Notes as Available Resources

July 14, 2011 by [Deirdre Wheatley-Liss](#)



One of the biggest questions in determining Medicaid eligibility for long term care is what are the person's "Available Assets" or "Countable Assets". The Countable Assets must be spent down to \$2000/\$4000 for Medicaid eligibility (depending on the program being applied for). A new case decided today says that New Jersey can look at certain promissory notes as being Countable Assets.

[Elderlawanswers.com](#) reports:

In a long-running case that has bounced back and forth between two federal courts, **the Third Circuit Court of Appeals rules that New Jersey's Medicaid agency may analyze promissory notes as trust-like devices and count the notes as available resources.** [Sable v. Velez](#) (U.S. Ct. App., 3rd Cir., No. 10-4647, July 12, 2011).

A group of New Jersey residents lent money to close relatives in return for promissory notes. After the individuals applied for Medicaid, the state denied their applications, claiming that the promissory notes were trust-like instruments that qualified as available resources.

The residents filed suit in federal district court seeking to enjoin the state from counting the notes as available resources. The district court [denied the request](#) for preliminary injunction, holding that there was nothing in the Medicaid Act or the POMS that prevented the state from analyzing promissory notes as a trust-like device if the situation warranted it. The residents appealed to the U.S. Court of Appeals for the Third Circuit, which [vacated and remanded](#), holding the district court committed legal error when it analyzed the notes as trust-like devices without first determining whether they would be counted as resources under the regular resource-counting rules. The court agreed with the plaintiffs' argument, which was based on the federal statutory requirement that the Medicaid program may not use eligibility rules that are more restrictive than those used by the SSI program (see 42 U.S.C. 1396a(a)(10)(c)(i)(III)).

The district court [again denied](#) the preliminary injunction, holding that the relationship of the parties and the terms, amount and timing of the loans indicated that the loans were not bona fide cash loans or promissory notes. The residents appealed.

In a ruling that is "not precedential," the U.S. Court of Appeals for the Third Circuit affirms, holding that the Medicaid applicants are not entitled to a preliminary injunction because they "failed to show that it was more likely than not that their notes would be considered cash loans or promissory notes under the regular SSI resource-counting rules or that their notes should not be considered trust-like devices."



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For the full text of this decision, go to: <http://www.ca3.uscourts.gov/opinarch/104647np.pdf>

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