



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

M.J.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

SOMERSET COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 9152-2016

and OAL DKT. NO. HMA 11970-2016

(CONSOLIDATED)

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is January 12, 2017 in accordance with an Order of Extension.

The matter arises regarding Petitioner's Medicaid application and the November 1, 2015 eligibility date. At issue is the funding of Petitioner's Qualified Income Trust

(QIT).¹ Petitioner had monthly income of \$3,344.39 which is comprised of \$2,139.90 in Social Security and \$1,204.49 from a pension. As such she is required to set up a QIT and fund it with her income. Once the income is placed in the QIT, it is not counted for purposes of determining Medicaid eligibility. Petitioner, through her Power of Attorney, who is also her attorney, set up the trust on March 15, 2015 and applied for benefits in June 2015. However, Somerset County found that the QIT was not properly funded until November 2015 and set eligibility as of that month.

Petitioner's attorney claims that Somerset County told him not to fund the QIT. ID at 4. Based on this allegation, Petitioner is seeking to equitably estop Somerset County from setting eligibility for November 2015. The Initial Decision upheld the November 1, 2015 date and, for the reasons set forth below in so much as they modify certain findings, I concur.

The QIT document was signed prior to Petitioner contacting Somerset County and Petitioner's course of action in the April deposits and the failure to make any further deposits until November violate the terms of the QIT. The QIT states that Petitioner's Social Security would be paid into the trust. The QIT cautions that "[n]o property may be placed in the Trust other than income from [Petitioner's] pensions, Social Security, or other income sources." R-18. The income is to either be directly deposited into the QIT account or deposited "in the same month the income is received by the" Petitioner.

Petitioner's monthly gross income totaled \$3,344.39. This amount is comprised of \$2,139.90 from Social Security and \$1,204.49 from a pension. However, in April

¹ As of December 1, 2014, New Jersey ceased covering nursing home services under the Medically Needy program and those applicants, who needed institutional-level of care in a nursing facility, an AL facility or home and had income in excess of \$2,163 (currently \$2,199) were required to place the excess income in a Qualified Income Trust (QIT), also known as a Miller Trust, to obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). By placing the excess income in a QIT, Somerset County is able to exclude that amount from the income limit.

2015 she made two deposits into the QIT that totaled \$4,170. The first deposit on April 1, 2015 was for \$1,984.80 which was described by her attorney as her net Social Security "after \$20 for bank fees, and some other costs." ID at 4. The Social Security Administration issues a benefit pay out calendar. See <https://www.ssa.gov/pubs/EN-05-10031-2015.pdf>. As Petitioner was born on the 24th of the month, her benefits would not have been received until the fourth Wednesday or April 22, 2015. This indicates the April 1, 2015 deposit was not Petitioner's April check. Based on the date alone, it is possible the April 24, 2015 deposit was that month's Social Security income. However that deposit of \$2,186 on April 24, 2015 exceeds both income checks – either net or gross. Income received during a calendar month is considered income for that entire month. N.J.A.C. 10:71-5.2(b)1. The unspent income in the following month counts towards resources. N.J.A.C. 10:71-4.1(c). It appears that Petitioner deposited a combination of income and resources into the QIT in April 2015 in violation of the QIT language and statute. The QIT rules are established through federal law at 42 U.S.C.A. § 1396p(d)(4)(B). That statute describes a QIT as "a trust established in a State for the benefit of an individual . . . [that is] is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust)." Thus, I FIND that Petitioner did not properly fund the QIT in April 2015 as the total amount deposited exceeds her net income by \$930.51.

While the Initial Decision upheld the November 1, 2015 date, Petitioner argued in exceptions that Somerset County led Petitioner's attorney to believe that he "did not have to fund the QIT until eligibility had been determined." Petitioner's Exceptions at 2. Petitioner contends that that belief was detrimental to her Medicaid application but does not argue how the legal construct of equitable estoppel squares with the readily

available information that "[i]n order to be financially eligible in any month, the individual must fund a QIT." R-2. I concur that equitable estoppel does not apply here since Somerset County's legal citations demonstrate that affirmative misconduct by a government employee must be demonstrated prior to contemplating invoking equitable estoppel against the government. At no point did the Initial Decision find any such misconduct.

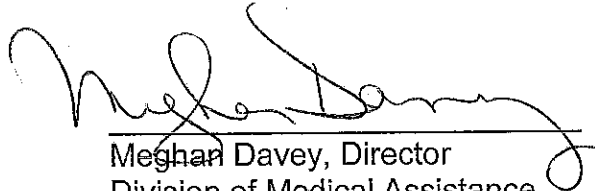
As noted in Respondent's exceptions, Petitioner's attorney drafted and executed the QIT in March 2015 prior to contacting Somerset County. That document names Petitioner's attorney as the trustee as well as the grantor and requires that Petitioner's income shall be deposited into the trust account during the month it is received. R-18. In all the letters written by the same attorney, there is no confirming language that deposits were suspended due to instructions by Somerset County. Petitioner's application was not filed until June 2, 2015 by which time her attorney had made two deposits in April and none in May. If Petitioner's account is to be believed, Somerset County would have had to tell her attorney to stop funding the QIT before even filing an application. The first letter in the record from Casey Franke at Somerset County is dated June 25, 2015, nearly a month after Petitioner stopped funding the QIT and contains no such instruction.

Based on my review of the record and for the reasons set forth above, I concur with the Initial Decision's conclusion that Petitioner did not establish eligibility for Medicaid until November 1, 2015.

THEREFORE, it is on this ^{14th} day of JANUARY 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services