



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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SHEILA Y. OLIVER
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CAROLE JOHNSON
Commissioner

MEGHAN DAVEY
Director

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

J.A.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MORRIS COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 16980-2018

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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is May 9, 2019 in accordance with an Order of Extension.

The matter arises regarding the determination that Petitioner was subject to a two day transfer penalty. Morris County found that Petitioner has funds remaining in the Qualified Income Trust (QIT) at redetermination. Petitioner's QIT was funded by a pension. At the time of redetermination, Petitioner was found to have excess resources remaining in the QIT account. These resources did not comprise the current month's pension benefit. The Initial Decision upholds the two – day transfer penalty.

QITs are relatively new to New Jersey; however, the enabling federal law has been in existence since 1993. That law permits a state to exempt a trust if it complies with the following requirements.

(B) A **trust** established in a State for the benefit of an individual if--

(i) the **trust** is composed only of pension, Social Security, and other income to the individual (and accumulated income in the **trust**),

(ii) the State will receive all amounts remaining in the **trust** upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title [42 USCS §§ 1396 et seq.], and

(iii) the State makes medical assistance available to individuals described in section 1902(a)(10)(A)(ii)(V) [42 USCS § 1396a(a)(10)(A)(ii)(V)], but does not make such assistance available to individuals for nursing facility services under section 1902(a)(10)(C). [42 USCS § 1396a(a)(10)(C)].

Here, Petitioner met these requirements. However, the State Medicaid Manual (SMM) expands on the statute for guidance on operations.

When payments are made for the individual's medical care you must require that the payments be made at intervals specified by your State (e.g., every month or by the end of the month following the month the funds were placed in the trust). An individual cannot be considered to have received fair market value for funds placed in a trust until payments for some item or service are actually made. Thus, funds cannot be allowed to accumulate indefinitely in a Miller trust and still avoid transfer of assets penalties.

SMM § 3259.7.C.3.

Petitioner's assets did accumulate in his QIT account and as of the date of redetermination he had resources in the trust. Morris County noted that the trust had

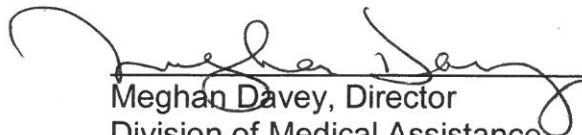
accumulated resources in the past. A review of the trust bank statements shows that the checks written out of the account varied in amount each month. While the pension check that was deposited in that account averaged about \$700 a month, Petitioner's actual monthly contribution to the cost of care varied from \$650 to \$1,000 a month. Exhibit D. At the time of redetermination, funds remained in the QIT that exceeded the pension amount and were subject to penalty.

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that the Petitioner was properly assessed a penalty.

THEREFORE, it is on this 8th day of MAY 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services