

his Medicare co-pay. Petitioner argued that he must pay a higher monthly rate of \$13,950 for a private room for medical reasons. For the reasons that follow, I hereby REVERSE the Initial Decision and return the matter to Hudson County for further review and action based on this decision.

Medicaid is a federally-created, state-implemented program designed, in broad terms, to ensure that qualified people who cannot afford necessary medical care are able to obtain it. See 42 U.S.C.A. § 1396, et seq., Title XIX of the Social Security Act ("Medicaid Statute"). The overarching purpose of the Medicaid program is to provide benefits to qualified persons "whose income and resources are insufficient to meet the cost of necessary medical services." 42 U.S.C.A. § 1396-1. It "is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services." Atkins v. Rivera, 477 U.S.154, 156 (1986). In setting up the Qualified Income Trust (QIT) the federal courts described situations where individuals in nursing homes had incomes that were "too low to enable them to pay their own nursing home costs, but too high to qualify for Medicaid benefits." Miller v. Ibarra, 746 F.Supp. 19 (1990).

As explained by the New Jersey Supreme Court in L.M. v. DMAHS, 140 N.J. 480,488-489 (1995):

We note that as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Pub.L. No. 103-66, Congress expressly provided for the creation of so-called "Miller Trusts," which permit "persons in income cap states whose fixed income places them over the income limit ... nevertheless [to] qualify for Medicaid nursing home benefits." Sanford J. Schlesinger & Barbara J. Scheiner, *OBRA '93 Makes Sweeping Changes in Medicaid Rules*, 21 *Est. Plan.* 74, 80 (1994). (Those trusts are so named because a precursor to the current codified version, involving the judicial creation of trusts for incompetent persons, was initially accepted in *Miller, supra*, 746 *F. Supp.* 19, as a method of excluding income for eligibility purposes, thereby avoiding the income cap.) Presently, in a state such as New Jersey, which provides for nursing-home coverage under 42 U.S.C.A. § 1396a(a)(10)(A)(ii)(V) but does not provide such coverage under the medically needy program, a trust containing "pension, Social Security, and other income to the individual" can

be established under federal law to exclude that income from a Medicaid eligibility determination. 42 U.S.C.A. § 1396p(d)(4)(B)(i). That trust, however, must provide that "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." 42 U.S.C.A. § 1396p(d)(4)(B)(ii). Accordingly, those trusts provide a mechanism that prevents persons requiring long-term nursing-home care from becoming caught in the "Medicaid Gap," and also helps to preserve the financial integrity of the Medicaid program.

The court defined the Medicaid Gap as "a term used to describe a level of income that is 'just above the Medicaid cut-off yet too low to cover the cost of nursing home care.' Jill Quadagno et al., *Falling into the Medicaid Gap: The Hidden Long-Term Care Dilemma*, 31 *The Gerontologist* 521, 521 (1991)." Ibid at 480. Congress addressed the Medicaid Gap by requiring states to either cover nursing home services under Medically Needy or allowing QITs.

Petitioner's claim that it is medically required for him to reside in private room is not born out by any credible evidence. No expert testified in the hearing. In fact, there were no witnesses and the hearing proceeded on the papers. ID at 2. While Petitioner provided billing statements to show he paid for the private room, there is nothing in the papers filed that give any credence to the finding that the private room was medically necessary. Thus, I hereby REVERSE this finding.

However, while the matter would normally go back to the OAL for further findings, there is a more pressing matter concerning Petitioner's income and resource eligibility due to the circumstances of the QIT and bank account that was designated to receive Petitioner's income.

In order to be eligible for Medicaid, which had a monthly income limit of \$2,250 in 2018, Petitioner was required to establish and fund a QIT to obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B and Medicaid Communication 18-01. By placing income in a QIT, Hudson County is able to exclude that amount from the income limit. According to the

QIT Petitioner's Power of Attorney signed on April 30, 2018, all of his income was to be placed into the trust. However, a review of the bank statements from June to November 2018 do not show that this was done. As a result, Petitioner's QIT and bank account does not meet the federal requirement which prevents his income from being excluded and renders him ineligible.

The enabling federal law for QITs permits a state to exempt a trust from the trust rules 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 failed to meet those requirements as the bank statements show that income was not properly deposited and resources were added to the QIT. As such, the QIT cannot be used to exclude income from the eligibility determination. Additionally, the trust must be looked at under the trust rules which make the funds in the QIT bank account accessible and creates another basis for ineligibility.

Petitioner's QIT states that "[n]o property may be placed in the Trust other an income from the primary beneficiary's pensions, Social Security, or other income sources . . . The entire amount of the income allocated to the Trust shall be deposited directly in the trust account or deposited in the trust account in the same month it is received by the primary beneficiary." Petitioner is the primary beneficiary.

The requirement that the income be deposited in the same month it is received is found in federal and state law. Simply put, income is only considered "income" in the

month it is received. 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). See Supplemental Security Income (SSI) guidance, namely Program Operations Manual System (POMS), SI 00810.010 Relationship of Income to Resources (“In general, anything received in a month, from any source, is income to an individual, subject to the definition of income for SSI purposes in What is Income SI 00810.005. Anything the individual owned prior to the month under consideration is subject to the resource-counting rules. An item an individual receives in the current month is income for the current month only. (See exceptions to this general rule in SI 00810.030.) If held by the individual until the following month, that item is subject to resource-counting rules. (See exception in SI 01110.100 - SI 01110.115.”). See also 42 U.S.C.A. 1382a; 20 C.F.R. §§ 416.1111 and 416.1123.

The six QIT bank statements contained in the record do not follow the law or the terms of the trust. As Petitioner applied in November of 2018, the statements prior to August 2018 do not affect his income eligibility but rather show a continued pattern of failing to comport with the terms of the QIT and the law. Rather than solely depositing monthly income into the QIT, the bank statements show substantial fluctuations in deposits that are not representative of Petitioner's income. As a result, in some months the income cannot be excluded from the \$2,313 income standard and in others Petitioner has resources in excess of the \$2,000. Based on the analysis of the record below, Petitioner was not eligible from August to December 2018. The matter is hereby RETURNED to Hudson County to examine Petitioner's QIT and other accounts in accordance with the applicable rules surrounding income and resources.

The first bank statement ends on June 6, 2018 and shows a singular deposit on May 17, 2018 of \$2,694. That deposit does not align with any of Petitioner's reported income. The second statement ending on July 6, 2018 shows two deposits on June 25, 2018 of \$12,550 and \$11,122.39. While the second deposit is the amount of the annuity, the first

deposit of \$12,550 exceeds Petitioner's income from Social Security and the pension by \$9,000 and appears to indicate resources were deposited into the QIT account which renders it void. Then for the statement ending August 8, 2018, \$13,353.39 was deposited on July 30, 2018 which still does not follow the amounts listed in the QIT but is closer to Petitioner's July income totals.

The first month Petitioner is seeking eligibility, August 2018, shows no deposits of any kind into the QIT account. Thus, as Petitioner placed no income into the QIT account for the month, his countable income for August 2018 is \$13,963.91 and he is ineligible for benefits.

The statement encompassing the month of September 2018 shows two deposits on September 24, 2018. The first deposit listed is the amount of the annuity. The second deposit is for \$3,000. As Petitioner's remaining income totals \$2,841.52, this deposit contains funds other than income which negates the QIT from excluding income that month. However, as set forth in the next paragraph, Petitioner was likely resource ineligible for this month.

The statement for October 2018 ends November 5, 2018 and shows two deposits on October 24, 2018. The first deposit is for \$22,244.78 and the second one is for \$5,200. It appears the first deposit is the missing annuity payment from August combined with the October annuity payment. If so, the August annuity income of \$11,122.39 became a resource on September 1, 2018 and would have rendered Petitioner over the \$2,000 resource standard and ineligible for September and October 2018.

There are no bank statements past the one ending November 5, 2018 so Petitioner's income eligibility is unknown. However, according the nursing home payment ledger dated January 23, 2019, Petitioner's account showed a credit of \$18,036.83 as of November 13, 2019. Those funds, like those held in an escrow account, belong to Petitioner and would be considered his resource for November and December 2018.

Based upon my review of the record, I hereby REVERSE the Administrative Law Judge's recommended decision. The matter is hereby RETURNED to Hudson County for a review of Petitioner's financial eligibility including but not limited to the findings above and the issuance of a new outcome letter based on that review.

THEREFORE, it is on this *28th* day of SEPTEMBER 2019,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is RETURNED to Hudson County for further action as set forth above.

A handwritten signature in black ink, appearing to read "Jennifer Langer Jacobs", is written over a horizontal line.

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services