

failure to provide a QIT that met the requirements of Med-Com 14-15, it was determined that his income exceeded the 2019 gross monthly limit.

On September 10, 2018, Petitioner, through his designated authorized representative (DAR)¹, filed an application for Medicaid benefits with the MCBSS. On November 14, 2018, MCBSS issued a request for several items, one of which was a copy of a QIT that met the requirements outlined in Med-Com No. 14-15, including but not limited to a Schedule A and specific listing of each pension source. On December 6, 2018, Petitioner's representative provided MCBSS with a copy of the DAR form and a revised Schedule A with income sources listed. On February 7, 2019, MCBSS advised that additional information was required to determine eligibility, including a QIT that complied with Med-Com No. 14-15. Petitioner was notified that his application would be continued in pending status until February 22, 2019 but would be denied if the information was not received by that date. On February 21, 2019, Petitioner provided another copy of the QIT previously submitted. On February 27, 2019, MCBSS advised that Petitioner's application was denied because the QIT submitted did not meet the requirements outlined in Med-Com No. 14-15.

At the administrative hearing, the Administrative Law Judge (ALJ) found that the reasons for denial were not required by Med-Com No. 14-15 or were readily obtainable. As a result, the ALJ found that MCBSS did not have sufficient basis to deny Petitioner's Medicaid application and ordered that MCBSS reconsider the issue of the QIT's compliance with Med-Com No. 14-15. For the reasons that follow, I hereby REVERSE the ALJ's decision.

By way of background, as of December 1, 2014, New Jersey received federal authority to cease covering nursing home services under Medically Needy and to permit applicants, who needed institutional level of care in a nursing facility, an AL facility or home

¹ Petitioner's authorized representative, Paul Lorrach, is a Medicaid specialist with Medicaid Plus, P.C. See <http://www.mymedicaidplus.com/>.

and had income in excess of \$2,163 (currently \$2,313) to place the excess income in a QIT, also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. §1396p(d)(4)(B). By placing the excess income in a QIT, MCBSS is able to exclude that amount from the income limit. The QIT document must contain the following provisions:

- The QIT must contain only income of the individual;
- The QIT must not contain resources such as money from the sale of real or personal property or money from a savings account;
- The QIT must be irrevocable;
- The QIT must have a trustee to manage administration of the Trust and expenditures from the Trust as set forth in federal and state law;
- New Jersey must be the first beneficiary of all remaining funds up to the amount paid for Medicaid benefits upon the death of the Medicaid recipient;
- Income deposited in the QIT can only be used for the specific Post-Eligibility Treatment of Income and to pay for the Medicaid beneficiary's cost share.

Med-Com No. 14-15.

The QIT submitted by Petitioner does not clearly address all of these requirements, specifically the fifth and sixth requirements. The QIT here is fundamentally flawed as it fails to correctly identify the applicable state agency. It instead identifies the "Applicable Agency" as the "New Jersey Board of Social Services," which does not exist as a State agency. Furthermore, Section 5.C. of the QIT identifies the first beneficiary of the Trust as the "New Jersey Board of Social Services Division of Medicaid and Medical Assistance," which also does not exist as a State agency or division thereof and which is not defined by the document itself. Additionally, Sections 3.E. and 5.B. are vaguely bound by the "rules and regulations" of the "Applicable Agency" and the "New Jersey Board of Social Services Division of Medicaid and Medical Assistance." It is unclear to which rules and regulations the QIT refers, as the Applicable Agency does not exist and the New Jersey Department of Human Services, Division of Medical Assistance and Health Services does not have its

own regulations with regard to QITs but is governed by the federal law.²

Furthermore, section 5.B. of the QIT sets forth the terms of “distributions during the lifetime of the settlor.” It states that “until the death of the Settlor, the Trustee shall hold or distribute the net income of the Trust Estate (*after payment of the authorized costs, taxes and fees of the Trust*) as required by the rules as regulations of the New Jersey Board of Social Services Division of Medicaid and Medical Assistance...” This statement belies the deduction requirements found in 42 C.F.R. 435.725 and 435.726 and Med-Com. 14-15. The federal regulation clearly states that all of Petitioner’s income, including “income that was disregarded in determining eligibility must be considered” and deducted “in the following amounts, in the following order, from the individual’s total income,”

(1) Personal needs allowance. A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. . .

(2) Maintenance needs of spouse. For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. . .

(3) Maintenance needs of family.

(4) Expenses not subject to third party payment. Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges . . .

[42 C.F.R. § 435.725]

Nothing permits the prior payment of any “authorized costs, taxes or fees.” In this way, the Trust unequivocally fails to meet the requirements of Med-Com. 14-15.

DMAHS, county and State vendor employees are prohibited from advising anyone by recommending specific actions to become eligible for Medicaid. See In Re Opinion No. 53 of the Comm. on the Unauthorized Practice of Law (May 16, 2016). Accordingly, while applicants seeking to establish a QIT are not required to use the template provided by

² N.J.A.C. 10:71-4.11(h) briefly references a time when New Jersey would impose a transfer penalty for income placed in a QIT because New Jersey provided medically needy coverage for nursing facility services. Additionally, while it is not an enumerated requirement in Med-Com 14-15, 42 USCS §407 prohibits the assignment of Social Security benefits which seems to conflict with Article I of the QIT.

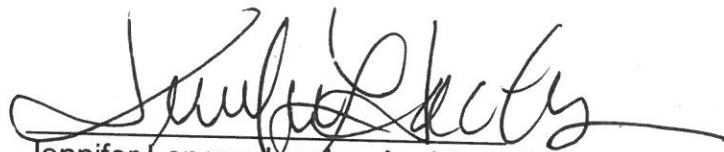
DMAHS, it is readily available to the public, provides basic information and meets the basic requirements when completed. At a minimum, the template provides the correct names and addresses of the applicable New Jersey State agencies. Furthermore, at all times during the application process, Petitioner was represented by a "Medicaid planning expert" at Medicaid Plus, P.C. I FIND that Petitioner's representative was notified on two occasions that the QIT did not comply with the requirements listed in Med-Com 14-15, and was given the opportunity to cure the defect. It is not DMAHS' obligation to notify a Medicaid planning expert of the substantive deficiencies of a QIT.

Accordingly, I FIND that Petitioner's QIT does not meet the requirements of Med-Com 14-15.

THEREFORE, it is on this ¹⁷ day of SEPTEMBER 2019,

ORDERED:

That the Initial Decision is hereby REVERSED.


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