



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

W.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

SUSSEX COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 6089-2020

As Assistant Commissioner for 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. Neither party filed exceptions to the Initial Decision in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 4, 2021 in accordance with an Order of Extension.

The matter arises regarding the June 1, 2020 denial of Petitioner's Medicaid application due excess income. Specifically, Sussex County found that Petitioner had failed to follow the terms of the Qualified Income Trust (QIT) with regard to post-eligibility distributions.

Petitioner, who died in early April, received income from two sources; a private pension and Social Security. The QIT had been established in May 2018 but Petitioner applied in January 2020. ID at 3. The private pension was directly deposited into the QIT on the last day of the month. The record contains bank statements from the QIT covering November 2019 through mid-April 2020. The pension check for November was deposited on November 29, 2019 and transferred to a checking account on December 9, 2019. From December 2019 through February 2020 the bank statements show the pension check being deposited on the last business day of the month and remaining there. On March 24, 2020 \$3,192.36 or the accumulated pension checks from those three months was transferred to the same checking account.

In upholding the denial, the Initial Decision determined that Petitioner failed to follow the terms of the trust regarding the disbursements from the trust based on post-eligibility treatment of income. The trust follows federal and state rules that require that Petitioner's income be applied to the cost of his care after certain deductions are taken. N.J.A.C. 10:71-5.7 and see 42 CFR § § 435.725 and 435.726. The trust specifies that that no expenditures can be made except as provided by the post-eligibility deductions or the trust fails. It is clear that this was not done for the income Petitioner received in December, January and February. I agree that this prohibits eligibility as the failure to follow the terms of the trust causes Petitioner's income to exceed the income limit and ADOPT the Initial Decision in this regard.

However, I note that the deposits for November and March were transferred from the QIT the following month. Due to the unique timing of Petitioner's direct deposit occurring on the last business day of the month, the pension income could follow the post-eligibility

deductions in the month it was received. The record does not contain any evidence of whether the post-eligibility rules were followed for November and March pension payments. The deposit into another checking account might have been sufficient to comply with the terms of the trust if the post-eligibility deductions were promptly paid. However, the record below provides no indication of the transactions in that account. Additionally, the bank statement for April 2020 does not cover the end of the month show the whether the pension was deposited or if it was forfeited due to Petitioner's death earlier in the month. If that income was not payable for April, Petitioner's Social Security payment would not require a QIT and he might have established eligibility for part of that month.¹ As such, the matter is REMANDED to consider additional documents and testimony regarding November, March and April.

While the terms of the QIT require that Medicaid receive the remaining funds, such a recovery only occurs when Petitioner actually received Medicaid benefits. At this point, Petitioner has not been found eligible so Medicaid is not entitled to any reimbursement and I REVERSED that finding. This may change on remand but absent Medicaid eligibility no such recovery is permitted.

¹ Petitioner's son stated that there was \$3,000 "frozen" in the QIT. The last QIT statement has a balance of \$1,064.12 or the net March pension that was deposited on March 31st. If the April pension was deposited, the balance would be \$2,128.24. On remand, the actual amount in the QIT as well as balances of any of Petitioner's other accounts should be set and compare to the \$2,000 resource standard.

29th
THEREFORE, it is on this day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the eligibility findings for December 2019, January 2020 and February 2020;

That the Initial Decision is hereby REVERSED with regard to the findings for November 2019, March 2020 and April 2020 as well as any recovery of the funds in the QIT;
and

That the matter is hereby REMANDED to OAL for further findings as set forth in this decision.



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