

The matter arises regarding the January 9, 2020 denial of Petitioner's Medicaid application due failure to correctly establish and fund a Qualified Income Trust (QIT). There was also an appeal claiming Cumberland County failed to process the application, however, that appeal became moot when the denial was issued.

Petitioner had been receiving Medicaid benefits under the Medically Needy program since 2013. Under that program, nursing home services were covered for individuals whose income exceeded 300% of the federal benefit rate (FBR) or \$2,313 in 2019 by spending down their excess income. As of December 1, 2014, New Jersey received federal authority to cease covering nursing home services under Medically Needy and permit 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) to place the excess income in a Qualified Income Trust (QIT), also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). By executing a written trust agreement, setting up the special bank account and depositing income into the account an applicant with excess income would become income eligible for Medicaid Managed Long Term Services and Supports (MLTSS) which includes nursing facilities.

Individuals who were receiving nursing facility services through the Medically Needy program as of December 1, 2014 were permitted to continue to receive benefits through the Medically Needy program so long as they remained otherwise eligible and remained in the nursing facility. Medicaid Communication 14-15. As such Petitioner was redetermined for Medically Needy using a six month budget period which ended on March 31, 2019. R-2 at 2.

On March 27, 2019, Petitioner, through Yocheved Breski, identified as the business office manager for the nursing home, submitted a redetermination form. R-1 at 59. A few hours after submitting the redetermination form electronically, a follow up email with Petitioner's name in the subject line was sent to Cumberland County stating that the nursing

home “would like to set up a QIT account starting April 1, 2019, can you please let me know which other document you may need to transition to regular Medicaid from medically needy?” R-2 at 53. The identical request about setting up a QIT and being removed from Medically Needy was made on April 1, 2019. R-2 at 51. When the case was assigned to a worker on April 8, 2019, the nursing home made the same request to the case worker stating the nursing home would set up a QIT account and to transition to regular Medicaid from medically needy. R-2 at 51.

In the interim, Petitioner through his Power of Attorney (POA), executed a QIT naming Sam Stern who works for the same company as Ms. Breski as trustee that was to receive Petitioner’s Social Security benefits. R-1 at 24. A bank account was opened at Wells Fargo in April 2019 entitled “[Petitioner’s name] irrevocable qualified income trust Sam Stern TTE.” R-1 at 30. The record contains two months of bank statements. On April 19, 2019 \$1,639 was deposited and on April 22, 2019 \$1,629 was withdrawn. R-1 at 31. On May 30, 2019 \$1,639 was again deposited. The next day that same amount was withdrawn. R-1 at 34. At the same time, Petitioner’s Social Security check in the amount of \$1,503 was being deposited in his TD bank account. R-1 at 38 and 41.

Beginning on May 3, 2019 Cumberland County asked for additional information regarding the redetermination including a copy of the QIT referenced in the three emails. R-1 at 52. Partial documents were provided. After gathering more information on August 13, 2019, Cumberland County asked how Petitioner was “depositing \$1639.00 into the QIT from his social security when the net amount is \$1503.00? [Petitioner’s] gross Social Security amount is \$1638.50. An explanation of this required.” R-2 at 50. Esti Bleir, another co-worker at the business office who was Petitioner’s Designated Authorized Representative (DAR) for the fair hearing, responded the same day that she looked into it and “we were funding the wrong dollar amount.” R-2 at 35.

On September 14, 2019, Mr. Stern, writing on behalf of the nursing home, filed for hearing claiming Cumberland County had failed to process what he now characterized as “a medically needy redet.” That matter was transmitted. Petitioner died in September. Cumberland County issued the denial on January 9, 2020 which was also appealed.

The Initial Decision found that there was no dispute that Petitioner failed to properly fund the QIT and that removed him from the Medically Needy program. I agree with that finding. Petitioner presented no witnesses at the hearing nor did he proffer any documents. What is left are the financial and legal documents that shows the an irrevocable QIT set up and, using Petitioner’s Social Security number, a trust account was opened and funded for at least two months with \$1,639 from some unknown source. See [https://www.state.nj.us/humanservices/dmahs/clients/QIT Memo to NJ Banks.pdf](https://www.state.nj.us/humanservices/dmahs/clients/QIT%20Memo%20to%20NJ%20Banks.pdf). At the same time Petitioner’s actual Social Security check of \$1,503 was being deposited in another account. No explanation was provided by the various nursing home staff who sought to change Petitioner’s status and also acted as trustee of the QIT. When asked to explain the QIT deposits that appeared in addition to his income, the employees of the nursing home tried to recast the application back to the Medically Needy program claiming it wasn’t processed timely and to “revoke” the irrevocable QIT.

The exceptions Petitioner claims that under N.J.A.C. 10:71 -2.2(c)(3) he could be processed for eligibility under a closed program. There is no support for such a proposition. N.J.A.C. 10:70-4.2 ends Medically Needy eligibility after six months and a new eligibility period is determined. Petitioner had, with the help of various employees of the nursing home, requested his eligibility status for Medically Needy be terminated and eligibility be established under Medicaid Only. In seeking to accommodate the request, Cumberland sought the required information and began processing his case as requested. To that end documentation was provided that in April 2019 a QIT was executed by Petitioner’s POA and

trust bank account opened in his name. The QIT statements showed that Petitioner had deposits April and May that had neither been reported nor explained. Petitioner's income was over the limit of \$2,313 and remained outside the QIT rendering him ineligible. Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby affirm the denial of benefits.

29th
THEREFORE, it is on this day of JANUARY 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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