



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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*Assistant Commissioner*

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

N.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

MIDDLESEX COUNTY BOARD :

OF SOCIAL SERVICES, :

RESPONDENTS. :

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 16778-2019**

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 30, 2021 in accordance with an Order of Extension.

This matter arises from the Middlesex County Board of Social Services's (MCBSS) October 9, 2019 notice denying Petitioner's Medicaid application for failure to properly establish and fund a Qualified Income Trust (QIT).

On August 28, 2019, Petitioner, with the assistance of her Designated Authorized

Representative, Becky Weinstein of Senior Planning Services, filed an application for Medicaid benefits with MCBSS. MCBSS's Brief at Exhibit A. On the application, Petitioner listed three sources of income: two monthly pension payments of \$1,292.51 and \$349.92, respectively, and monthly Social Security payments of \$1,752.30. Ibid. Attached to her application was a copy of Petitioner's irrevocable QIT document, dated July 26, 2019, which listed three sources of funding on page one of the document: Social Security, Prudential Pension, and Girl Scout Pension. Ibid. Schedule A to the QIT document listed three sources of income and the amount from each source that was to be deposited into the QIT each month. Ibid. Specifically, it listed "Social Security" in the amount of \$1,746.50, "Pension" in the amount of \$1,292.51, and "Other" in the amount of \$349.92, for a total of \$3,388.93.<sup>1</sup> Ibid. Schedule A additionally shows that there was an initial deposit made on July 31, 2019 in the amount of \$1,752.30, which was Petitioner's monthly Social Security payment. Ibid. The QIT document named two professionals, Stephen A. Mielach<sup>2</sup> and Charles Byrnes, Esq, as the trustee and successor trustee of the QIT, respectively. Ibid.

On August 29, 2019, September 19, 2019, and September 26, 2019, MCBSS sent letters to Petitioner requesting verifications that were necessary to determine eligibility, including verification of Petitioner's Girl Scout pension and bank statements showing that the QIT had been properly funded. The September 26, 2019 letter advised that, "The entire amount of the income allocated to the Trust must be deposited directly in the trust account or deposited in the trust account in the same month the income is received by the primary beneficiary." Id. at Exhibit D.

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<sup>1</sup> Schedule A to the QIT incorrectly listed Petitioner's monthly Social Security payment as \$1,746.50, instead of \$1,752.30. Accordingly, the total amount that should have been deposited into the QIT from Petitioner's three sources of income was actually \$3,394.73, not \$3,388.93. MCBSS's Brief at Exhibit A. Regardless of this error, the full amount of Petitioner's monthly Social Security payment was deposited into the QIT for the months of July through September 2019. Petitioner's Brief at Exhibit 3.

<sup>2</sup> Stephen A. Mielach is a licensed clinical social worker and National Master Guardian. See S.D. v. DMAHS, 2013 N.J. Super. Unpub. LEXIS 393 (App. Div. Feb. 22, 2013).

Petitioner provided MCBSS with the first three months of bank statements for the QIT account. Petitioner's Brief at Exhibit 3. The statements provided confirmed an initial deposit of \$1,752.30 was deposited into the QIT on July 31, 2019 and that no other deposits were made into the QIT during the month of July 2019. Ibid. During the month of August 2019, Petitioner's Girl Scout pension payment in the amount of \$349.92 was deposited into the QIT on August 5, 2019 and her Social Security payment in the amount of \$1,752.30 was deposited into the QIT on August 28, 2019. Ibid. Petitioner's Prudential pension payment in the amount of \$1,292.51 was not deposited into the QIT in August 2019. Ibid. However, it appears that Petitioner's August 2019's Prudential pension payment was directly deposited into the QIT on September 3, 2019.<sup>3</sup> Ibid. Additionally, Petitioner's Social Security in the amount of \$1,752.30 was deposited into the QIT on September 25, 2019 and Petitioner's September 2019 Prudential pension payment in the amount of \$1,292.51 was deposited into the account on September 30, 2019. Ibid. Petitioner's September 2019 Girl Scout pension payment was not deposited into the QIT during the month of September 2019.

On October 9, 2019, MCBSS denied Petitioner's application on the grounds that her gross income exceeded the eligibility limit of \$2,313 per month and that she failed to verify that her QIT was funded with all three income sources listed on the first page and Schedule A of the QIT document.<sup>4</sup> MCBSS's Brief at Exhibit E.

The Initial Decision in this matter denied Petitioner's Motion for Summary Decision and found that Petitioner failed to prove that MCBSS erred in its decision to deny her application for failing to fully fund the QIT during the months of July through September

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<sup>3</sup> The September 3, 2019 deposit in the amount of \$1,292.51 is notated on the September 27, 2019 statement as "Pru Annty Pymt Aug 19." Petitioner's Brief at Exhibit 3.

<sup>4</sup> Petitioner filed a new Medicaid application on November 11, 2019, and because all three of the income sources set forth on page 1 and Schedule A of the QIT agreement were being deposited into the QIT beginning in October 2019, MCBSS approved Petitioner's November 2019 application, effective October 1, 2019. ID at 5.

2019.<sup>5</sup> For the reasons set forth below, I hereby ADOPT in part and REVERSE in part the Initial 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 assisted living facility, or a home and had income in excess of \$2,163 (currently \$2,382) 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, the County Welfare Agency (CWA) is able to exclude that amount from the income limit. However,

In order for income to be disregarded, it MUST be deposited monthly into the QIT bank account. Checks deposited into the QIT bank account must include the entire dollar amount of that income source (for example, social security check for \$1,000 cannot be broken into \$500 inside the Trust and \$500 outside of the trust), the entire check must be deposited inside or outside the Trust.

Medicaid Communication No. 14-15. In addition to the requirement that checks deposited into the QIT "must include the entire dollar amount of that income source," 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

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<sup>5</sup> N.J.A.C. 1:1-12.5(b) provides that a motion for summary decision requires analysis of whether "the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." At the hearing in the present matter, the parties agreed that there is no factual disputes in this matter and the only issue to be determined was whether MCBSS had a sufficient legal basis to deny Petitioner's first Medicaid application.

specific Post-Eligibility Treatment of Income and to pay for the Medicaid beneficiary's cost share.

Med-Com No. 14-15.

While Petitioner argued that MCBSS's actions in denying Petitioner's application for failing to deposit all three sources of income referenced in the QIT were "draconian," Petitioner was aware that her income exceeded the \$2,313 income limit in 2019 to qualify for benefits and voluntarily established the QIT prior to her even applying for Medicaid benefits. While it was not necessary in this particular matter for Petitioner to establish a QIT where all three sources of her income were deposited into the QIT in order to meet the income limit to qualify for benefits, Petitioner chose to establish a QIT where it specifically directed that all three sources of her income needed to be deposited into the QIT each month. Moreover, she chose professional trustees to administer the QIT who failed to follow the requirements of the QIT document.

The funds designated for inclusion in the QIT, as set forth in a Schedule A to the QIT document, and the funds actually deposited into the account, as confirmed by the QIT bank statements, must match, regardless of whether the funds actually deposited into the account would have, in theory, lowered the applicant's income for purposes of establishing eligibility. In the present matter, the sources of income actually deposited into the QIT during the months of July through September 2019 would have lowered Petitioner's income under the \$2,313 income limit; however, if Petitioner only deposited her monthly Girl Scout Pension payment of \$349.92 into the QIT account, the income from her Social Security and Prudential Pension payments that were not deposited, would have exceeded the income limit to qualify for benefits, and Petitioner would not have been eligible to receive benefits during any particular month where only the Girl Scout pension payment was deposited. It is therefore imperative that the QIT document, as drafted, and the bank statements, which confirm the actual deposits made, are aligned so that the CWA can rely upon them in order to exclude

the income designated to the QIT from the income limit.

In the present matter, the bank statements provided show that, contrary to the terms of the QIT, Petitioner only deposited one source of income, her Social Security payment, in the month of July. Petitioner's Brief at Exhibit 3. Moreover, only two sources of income, Petitioner's Social Security and Girl Scout pension payments, were deposited in the month of August, and only two sources of income, Petitioner's Social Security and Prudential pension payments, were deposited in the month of August.

However, from the bank statements presented, it appears that but for a late direct deposit made by Prudential, Petitioner would have met the terms of the QIT for the month of August 2019. Specifically, the statements shows that Petitioner's Girl Scout pension was deposited into the QIT at a Wells Fargo branch on August 5, 2019 and her Social Security payment was direct deposited into the QIT on August 28, 2019. Petitioner's Brief at Exhibit 3. However, Petitioner's August 2019 Prudential pension payment was not directly deposited by Prudential into the QIT until September 3, 2019. Ibid. The statement specifically shows that the deposit was notated as Petitioner's August 2019 payment, and additionally, her September 2019 payment was appropriately deposited by Prudential into the QIT on September 30, 2019. Thus, two Prudential pension payments were deposited into the QIT during the month of September 2019. As the deposit was a direct deposit by Prudential for Petitioner's August 2019 payment and Petitioner had no control over the timing of this deposit, I FIND that Petitioner would have met the terms of the QIT for the month of August 2019 if the Prudential pension payment was timely deposited by Prudential into the QIT. Accordingly, I REVERSE the Initial Decision's findings that MCBSS appropriately determined that Petitioner failed to meet the terms of Schedule A of the QIT document, for the month of August 2019 and FIND Petitioner eligible for that month. However, as Petitioner only deposited one out of the three designated sources of income into the QIT during the month of July 2019 and only deposited two out of three designated sources of income into the QIT

during the month of September 2019, I ADOPT the Initial Decision's findings that MCBSS appropriately determined that Petitioner failed to fully fund the QIT, as set forth in Schedule A of the QIT document, for the months of July and September 2019.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision's conclusions as they relate to the funding of the QIT for July and September 2019 and REVERSE the Initial Decision's conclusions as they relate to the funding of the QIT for August 2019, as Petitioner demonstrated that she met the terms of the QIT document for August 2019 only.

THEREFORE, it is on this 24th day of AUGUST 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part, and MCBSS take action in accordance with the decision set forth above.



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