

The matter arises regarding the March 3, 2021 denial of Petitioner's Medicaid application. The application was denied due to failure to provide documentation that the Qualified Income Trust (QIT) that had been established for Petitioner had been properly funded. This information was sought as Petitioner received income from two sources- an alimony award and Social Security- which exceeded the Medicaid income limit of \$2,349 for 2020 and \$2,382 for 2021. R-4. The record contains a Judgement of Divorce from Bed and Board dated July 26, 2018 but no Final Judgment of Divorce. R-6. The QIT had been established in September 2020 and the terms of the trust required that the \$500 in weekly alimony be deposited in the QIT bank account. R-8. Monmouth County Board of Social Services (Monmouth County) requested statements from the QIT bank account to verify that Petitioner had funded the QIT. The denial letter states that the QIT must be funded with \$2,166.50 each month in accordance with N.J.A.C. 10:71-5.2(b)2.i. That regulation states that when determining income eligibility, weekly income is multiplied 4.33 to determine the monthly amount.

Here Petitioner's income includes both a monthly Social Security benefit and weekly alimony. The Social Security benefit is described as \$15,710 annually which results in \$1,309 per month. With alimony payments of \$2,166.50, Petitioner's income is \$3,475.50 which exceeds the income limit for 2020 and 2021. New Jersey permits applicants who had income in excess the Medicaid limit of 300% of the SSI Federal Benefit Rate (FBR) to place the excess income in a QIT and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). Medicaid Communication 14-15. By executing a written trust agreement, setting up the special bank account and depositing income into the account that income to be excluded when determining financial eligibility for Medicaid.

In upholding the denial, the Initial Decision determined that Petitioner failed demonstrate that denial was in error due to the failure to properly fund the QIT. I agree that Petitioner failed to fund the QIT and that the failure is, in part, based on the calculation set

forth in N.J.A.C. 10:71-5.2(b)2.i. That regulation is to determine eligibility and demonstrates that Petitioner had income in excess of the standard. She chose to fund her QIT with the alimony which was to be paid weekly rather than her monthly Social Security check. The QIT bank statements do not reflect weekly payments which, due to the calendar, would not always be \$2,000 a month. Moreover, Petitioner failed to provide information on how the payments, which would have been paid since 2018, were being made. The record shows that Petitioner made monthly lump sum deposits of \$2,000 whether or not it corresponded to the number of weeks in the particular month. For example, December 2020 has five weeks with the first and last week having two days from the former and latter month but Petitioner only deposited \$2,000 or four weeks of alimony. Even so, the "funding" of the QIT was duplicitous as those deposits were immediately transferred back to the ex-husband the same business day violating the QIT which states that disbursements from the account are made in accordance with a specific priority that follows N.J.A.C. 10:71-5.7. R-8. See also 42 CFR § § 435.725 and 435.726. Yet Petitioner or her trustee, neither of whom testified at the hearing, used electronic transfers to return all the payments to her ex-husband.

Petitioner provided the Wells Fargo QIT bank statements from September 2020 through February 2021. R-9 through R-13. No income deposits appear for the month of September. On October 29, 2020, \$2,000 was deposited into the account. Petitioner's ex-husband's name is in the description of the transaction. The same day \$2,000 is transferred back to the ex-husband through Zelle.¹ R-10.² On November 30, 2020, \$2,000 is again

¹ According to Wells Fargo's website "Zelle[®] is a fast, safe and easy way to send money to, and receive money from, people you know and trust who have a bank account in the U.S. -- typically in minutes when both sender and receiver are already enrolled with Zelle[®] at their financial institution or in the Zelle[®] app." See <https://www.wellsfargo.com/financial-education/basic-finances/manage-money/payments/what-is-zelle/>.

² The first page of the October 27, 2020 through November 25, 2020 bank statement is marked R-10. The second and third pages are marked R-11, apparently in error. R-11 is described in the exhibit list as the statement from November 26, 2020 through December 23, 2020. The citation here uses the correct exhibit marking for the bank statement ending November 25, 2020.

deposited with the ex-husband's name in the transaction and again transferred back to the ex-husband through Zelle. R-11. On December 23, 2020, \$2,000 is again deposited and transferred back to the ex-husband. R-11. On January 13, 2021 \$2,000 is deposited and is transferred back to the ex-husband through Zelle on January 14, 2021. In February the QIT receives two deposits of \$500 – one on February 9th and one on February 17th. On each day the \$500 was transferred back to the ex-husband using Zelle. Based on the transactions, it does not appear that Petitioner ever deposited the alimony into the QIT account. Rather the funds were briefly laundered through the account before immediately returning the funds to the ex-husband to make it appear that Petitioner had funded the QIT.

It has been noted that “Medicaid is an intensely regulated program.” H.K. v. Div. of Med. Assistance & Health Servs., 184 N.J. 367, 380 (2005). DMAHS is obligated to administer New Jersey's Medicaid program in a fiscally responsible manner to ensure that the limited funds available are maximized for all program participants, Dougherty v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 91 N.J. 1, 4-5 (1982); Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217-19 (App. Div. 2004), certif. denied, 182 N.J. 425 (2005). Income eligibility must exist for each month where eligibility is sought. N.J.A.C. 10:71-5.1. There is no statutory or regulatory leeway to grant Medicaid benefits to those who are above the income limit.

Petitioner's Designated Authorized Representative (DAR) stated that Petitioner “did not have any control over whether or not her ex-spouse would send that [alimony] payment in a timely manner”. ID at 5. However, neither Petitioner nor her trustee testified as to how alimony was paid. The 2018 Settlement Agreement states she is to receive weekly payments. Yet the bank statements show that she or her trustee, who has control over the payments flowing out of the QIT bank account, rejected the desposits and returned the funds to her ex-husband.

I do note that the Initial Decision states that the only document related to Petitioner's marital status is a Judgment of Divorce from Bed and Board. The certification of November 13, 2020 that is true copy of the judgment suggests that there may be no Final Judgement of Divorce. If that is the case, Petitioner is still considered married and the eligibility rules for institutional spouses would apply. See *H.K. v. Div. of Med. Assistance & Health Servs.*, 379 N.J. Super. 321, 323 n.1 (Super. Ct. App. Div. 2005) "Also known as a 'limited divorce,' a divorce from bed and board does not dissolve the marriage; it formalizes the couple's arrangement to live separately and requires one spouse to pay for the other spouse's separate living expenses. N.J.S.A. 2A:34-3; see *Weinkrantz v. Weinkrantz*, 129 N.J. Super. 28, 32-33, 322 A.2d 184 (App.Div.1974). As a result of the divorce from bed and board, H.K.'s wife remained a 'community spouse' for Medicaid purposes. See *N.J.A.C. 10:71-5.7(c)*." While this does not affect the denial of benefits vis-à-vis the funding of the QIT, Petitioner would be considered under institutional rules if she reapplies.

Thus, for the reasons set forth above, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this ^{28th} day of SEPTEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED as set forth above.



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