



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SARAH ADELMAN
Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

June 29, 2021

Leslie Sklar, Deputy Clerk
Office of Administrative Law
9 Quakerbridge Plaza
Trenton, NJ 08625

Re: V.D. v. Monmouth County Division of Social Services
OAL Dkt. HMA 11401-2020
Remand

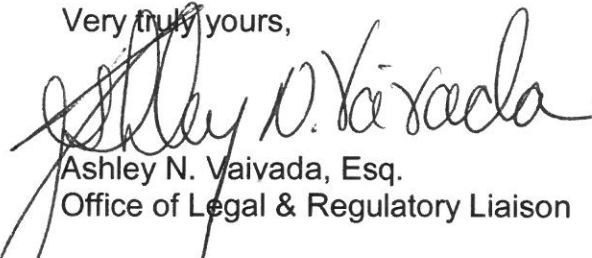
Dear Ms. Sklar:

The Initial Decision in the above-referenced matter has been partially reversed and is being remanded by the Assistant Commissioner.

This matter arises from the November 2020 denial of Petitioner's Medicaid application due to her failure to properly fund a Qualified Income Trust (QIT). The Initial Decision reversed the denial and found that the QIT was properly funded for the months of April through September 2020. However, as set forth in the attached Order of Remand, the testimony and documentary evidence presented is insufficient to support a finding regarding the permissibility of the QIT funding for the months of June through September 2020. Accordingly, this matter is being remanded for further fact-finding and testimony in order to make a determination regarding the funding of the QIT for the months of June through September 2020 only.

I have enclosed new transmittal forms as well as the case file from the prior hearing. If you have any questions or need additional information, please contact me.

Very truly yours,



Ashley N. Vaivada, Esq.
Office of Legal & Regulatory Liaison

C: Yale Hauptman, Esq.
Monmouth County Division of Social Services



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

V.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

MONMOUTH COUNTY DIVISION :

OF SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 11401-2020

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision 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 June 24, 2021 in accordance with an Order of Extension.

This matter arises from the November 2020 denial of Petitioner's Medicaid application due to her failure to properly fund a Qualified Income Trust (QIT). On February 19, 2020, Petitioner's sister and co-power of attorney (POA), J.B., entered into a (QIT) agreement on

behalf of Petitioner, which was prepared by Petitioner's attorney, Yale Hauptman, Esq. of Hauptman & Hauptman, PC. R-8. Schedule A of the QIT agreement provided that Petitioner's full monthly Social Security payment of \$2,633 was to be deposited into the QIT. Ibid. On April 20, 2020, J.B. funded the QIT with an initial deposit of \$2,733, which included Petitioner's full monthly Social Security payment and an additional \$100 to keep the account open. R-9. J.B. subsequently deposited \$2,633 on May 26, 2020, and \$2,583 on June 16, 2020, July 27, 2020, and September 2020.¹ R-9. The QIT agreement allowed payments to be made for Petitioner's medical expenses, a \$50 personal needs allowance (PNA) for Petitioner, and nursing home expenses, among other payments. R-8.

On June 16, 2020, Mr. Hauptman filed an application for Medicaid benefits on Petitioner's behalf. R-2. On September 10, 2020, a caseworker for the Monmouth County Division of Social Services (MCDSS) requested verification of certain information that was deemed necessary to process Petitioner's application, including verifications of Petitioner's age and citizenship, current and prior residences, proof of how certain withdrawals were used, and proof of QIT account funding on the first month that Medicaid eligibility was needed. R-5. The verifications were due on September 24, 2020; however, they were not received by that date, and MCDSS issued a second letter, dated September 25, 2020, requesting the same verifications by October 9, 2020. R-6. On or about October 16, 2020, MCDSS received the QIT documents. R-7. Because additional statements related to an Ameriprise Special Needs Trust account were needed, MCDSS sent out a third letter requesting the updated statements. Ibid. On November 10, 2020, MCDSS issued a denial letter, citing improper funding of the QIT as a result of deposits being made for less than \$2,633, which was set forth in Schedule A of the QIT agreement. R-10.

By way of background, prior to December 2014, individuals with income above the

¹ The Initial Decision provides that no statements for August 2020 were provided. ID at 3. The statements for August 2020 were provided; however, no deposit was made during that month. Ibid.

Medicaid limit of 300% of the SSI Federal Benefit Rate (FBR) were not eligible for Medicaid if residing in an assisted living facility. As of December 1, 2014, New Jersey permitted applicants who had income in excess of this amount to place the excess income in a QIT also known as a Miller Trust. See 42 U.S.C. § 1396p(d)(4)(B). Medicaid Communication 14-15. Simply put, when an individual's monthly income is placed in a QIT federal law permits that income to be excluded when determining financial eligibility for Medicaid. By executing a written trust agreement, setting up the special bank account, and depositing income into the account, an individual can now become income eligible for Medicaid Managed Long Term Services and Supports (MLTSS), which includes assisted living facilities, even though their monthly income exceeds the income eligibility limit. In 2020, the income eligibility limit for MLTSS was \$2,349. See Medicaid Communication No. 20-02.

The bank account statements presented show that deposits were made on April 20, 2020, May 26, 2020, June 16, 2020, July 27, 2020, and September 9, 2020. R-9. I concur with the ALJ's assessment that the initial deposit of \$2,733 in April 2020 did not constitute improper funding as a result of J.B. depositing an additional \$100 to open the account. The additional \$100 was necessary to keep the account open after the funds in the account were disbursed. In this matter, Petitioner is entitled to a PNA of \$50 and the remaining amount from her monthly Social Security payment, \$2,583, is due to the nursing facility in which Petitioner resides. Without the additional \$100, the account would not stay active, as it would be left with a \$0 or negative balance after the deduction for banking fees every month after the funds were expended. Additionally, the fact that Petitioner's full Social Security payment of \$2,633 was deposited into the QIT shows that Schedule A of the QIT agreement was fulfilled through J.B.'s April 2020 deposit. Additionally, the full amount of Petitioner's May 2020 Social Security payment was deposit into the QIT, in accordance with Schedule A of the QIT agreement. Accordingly, I ADOPT the Initial Decisions findings that the QIT was properly funded in April and May 2020.

However, I am unable to determine, based upon the record in this matter, whether the deposits made between June through September 2020 properly funded the QIT. For the reasons set forth below, I hereby REVERSE the Initial Decision as it relates to the June through September 2020 deposits and REMAND the matter for further testimony and fact-finding proceedings, as there exist inconsistencies between the testimony and documentation that need to be resolved prior to a determination being made in this matter.

J.B. testified that in April and May 2020, she deposited the full amount of Petitioner's Social Security payment into the QIT; however, beginning in June 2020, she began to subtract Petitioner's \$50 PNA prior to depositing the full amount into the QIT. ID at 4. She stated that because of the COVID-19 pandemic, she was afraid to go out in public, including to the bank, which had limited hours as a result of the pandemic. Ibid. So, in order to deposit the funds for Petitioner, she deposited Petitioner's Social Security payment into her bank account and then transferred \$2,583 into the QIT and delivered the remaining \$50 to Petitioner. Ibid. However, the documents presented in this matter do not appear to support J.B.'s testimony. While I agree that \$50 was deducted prior to the deposits into the QIT, the bank statements presented from June and July 2020 show that J.B. did not transfer the \$2,583 deposit into the QIT from her own bank account. See R-9. The only deposit during this timeframe that is shown to have been transferred from J.B.'s bank account to the QIT was the September 9, 2020 deposit, as the deposit was notated on the bank statement as "Online Transfer from [J.B.] . . . Prime Checking. . . ." Ibid. The June and July 2020 deposits, in contrast, are notated on the statements only as "Deposit," which could mean that J.B. deposited this amount either through an in-person bank teller, an ATM, or a drive-up teller at the bank. As such, it is unexplained as to why it would have been necessary for J.B. to deduct the \$50 prior to depositing the rest of Petitioner's Social Security payments if J.B. was traveling to the bank to make the deposits at issue. J.B. could have easily issued a check to Petitioner for her monthly PNA once the full Social Security payment was deposited. In fact,

it appears that a \$100 check from the QIT was cashed on May 26, 2020, which could represent Petitioner's April and May 2020 PNA payments.² Ibid. I, additionally, note that no documentation was presented to show that the \$50 removed from each of the QIT deposits were issued to Petitioner.

Moreover, it is equally unclear from J.B.'s testimony why the COVID-19 pandemic would have only prevented her from traveling to the bank to make the deposits between the months of June through September 2020, when she was able to open the account and make initial deposits in April and May 2020, which was during the height of the pandemic. See Exec. Order No. 235 (April 15, 2021), 53 N.J.R. 761(a) (May 17, 2021) (providing that "due to the significant emergency measures the State has taken in response to COVID-19, in the summer and fall of 2020 there was a decrease in the rate of reported new cases of COVID-19 in New Jersey, in the total number of individuals being admitted to hospitals for COVID-19, and in the rate of reproduction for COVID-19 infections in New Jersey"). Accordingly, further testimony and fact finding is necessary in order to determine how J.B. accounted for, deposited, and disbursed Petitioner's Social Security payments at issue in this matter.

Additionally, none of the statements in the record show that Petitioner's income was deposited in August 2020. Pursuant to the QIT agreement, "Payments must be made no later than the last day of the month in which the income is received. . . ." R-8. Income is only considered "income" in the month it is received. N.J.A.C. 10:71-5.2(b)1. The unspent income in the following month counts towards resources. N.J.A.C. 10:71-4.1(c). See Supplemental Security Income (SSI) guidance, namely Program Operations Manual System (POMS), SI 00810.010 Relationship of Income to Resources ("In general, anything received in a month, from any source, is income to an individual, subject to the definition of income for SSI

² Only two copies of checks that were issued from the QIT were provided by the parties in this matter. The checks, dated April 24, 2020 and May 26, 2020, were made out to Petitioner's nursing facility and each was issued in the amount of \$2,583. P-2. It is, thus, unclear to whom the \$100 check was for or when it was issued.

purposes in that is Income SI 00810.005. Anything the individual owned prior to the month under consideration is subject to the resource counting rules. An item [that an individual] receive[s] in the current month is income for the current month only. (See exceptions to this general rule in SI 00810.030.) If held by the individual until the following month, that item is subject to resource-counting rules. (See exception in SI 01110.100 - SI 01110.115.)”). See also 42 U.S.C.A. 1382a; 20 C.F.R. §§ 416.1111 and 416.1123.

In guidance under the State Medicaid Manual (SMM), the requirements of the QIT are clear: “To qualify for this exception, the trust must be composed only of income to the individual, from whatever source. The trust may contain accumulated income, i.e., income that has not been paid out of the trust. **However, no resources, as defined by SSI, may be used to establish or augment the trust. Inclusion of resources voids this exception.**” SMM § 3257.7C (emphasis added).

The statements show that there was a transfer made from J.B’s bank account to the QIT on September 9, 2020; however, the bank statement ends on September 18, 2020 and no additional statements were provided to show if there was an additional deposit made in September 2020. Moreover, no documentation was presented that shows the actual date that the Social Security payments were issued to Petitioner. Therefore, it is unclear if this September 9, 2020 transfer represented Petitioner’s September 2020 Social Security payment. Without more information and documentation related to the Social Security payments and deposits, I am unable to determine if the QIT was properly funded during August and September 2020.

Further, I disagree with the Initial Decision’s finding that MCDSS failed to adhere to its responsibilities in the application process. See ID at 9. Specifically, the Initial Decision provides that MCDSS failed to mention the QIT in the October 16, 2020 verification letter and that MCDSS failed to advise Petitioner’s representatives that it saw a problem with how the QIT was funded between the months of April and September 2020. Ibid. However, MCDSS’s

responsibility in the application process was to request documentation that was deemed necessary in order to determine eligibility, which it did. MCDSS was not required to advise Petitioner's representatives of the terms of its own QIT agreement that J.B. voluntarily entered into on Petitioner's behalf and accepted responsibility to act as trustee. The requirements for operating the QIT were clearly set forth in the agreement. Petitioner's representatives should have been aware that the failure to abide by the terms of the QIT agreement may result in Petitioner's ineligibility for benefits in this matter.

Thus, based on the record and for the reasons enumerated above, I hereby ADOPT the Initial Decision as it relates to the April and May 2020 deposits, REVERSE the Initial Decision as it relates to the months of June, July, August, and September 2020, as the record is insufficient to support the findings contained therein, and REMAND the matter to the OAL for further fact-finding and development of the record in accordance with this decision.

THEREFORE, it is on this 22nd day of JUNE 2021

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part, as set forth above; and

That the matter is REMANDED to the OAL for further testimony and factual findings as set forth above.



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