



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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SARAH ADELMAN  
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Assistant Commissioner

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 RETURN

OAL DKT. NO. HMA 05505-2021

(ON REMAND 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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 29, 2021, in accordance with an Order of Extension. This matter was previously remanded to OAL for further testimony and fact-finding related to the disbursements of Petitioner's Social Security payments into her Qualified Income Trust during the months of June, July, August, and September 2020.

This matter arises from the November 2020 denial of Petitioner's Medicaid application due to her failure to properly fund a 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.<sup>1</sup> 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, September 9, 2020 and September 28, 2020. RH-P-5. 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, among other things, 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

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<sup>1</sup> I note that while the Appendix to the Initial Decision provides that no exhibits were entered into evidence by the Monmouth County Division of Social Services (MCDSS) in this matter, the Initial Decision references exhibits R-1 through R-10, which were previously entered into evidence by MCDSS at the prior proceeding in this matter. Accordingly, as they are part of the OAL case file in this matter, I will also be referencing these exhibits herein.

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 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 prior, March 25, 2021 Initial Decision in this matter determined that Petitioner had properly funded the QIT for the months of April through September 2020. However, through an Order of Remand, dated June 22, 2021, I determined that the documentary evidence in the record was only sufficient to find that Petitioner had properly funded her QIT for the months of April and May 2020. I additionally found that the record was insufficient to demonstrate that the QIT was properly funded for the months of June, July, August, and September 2020. I, accordingly, reversed the March 25, 2021 Initial Decision as it related to these specific months and remanded the matter for further testimony and development of the record in relation to how J.B. accounted for, deposited, and disbursed Petitioner's social security payments for June, July, August, and September 2020.

The September 2, 2021 Initial Decision in this matter found that Petitioner's QIT was not properly funded for the months of June, July, and September 2020 because J.B.

subtracted Petitioner's PNA in the amount of \$50.00 per month prior to depositing the balance of \$2,583 into her QIT. ID at 8. I concur. J.B. testified at the remand hearing in this matter that her previous testimony regarding her method for depositing the balance of Petitioner's Social Security payments was incorrect and that she actually deposited the balance of Petitioner's Social Security payment, minus the \$50 PNA, through use of the drive-thru teller at the bank. Id. at 6. Petitioner testified that she was trying to be efficient by deducting the \$50 PNA prior to making the deposit. Ibid. However, Schedule A of the QIT agreement that J.B. entered into on Petitioner's behalf specifically provides that Petitioner's full monthly Social Security payment of \$2,633 was to be deposited into the QIT each month. R-8. Therefore, J.B.'s failure to deposit the full amount of Petitioner's Social Security payments resulted in Petitioner's QIT not being properly funded for the months of June, July, and September 2020.

Moreover, J.B. testified that she accidentally deposited Petitioner's August 2020 Social Security payment into her personal account and once she was made aware of this error, she transferred the funds, minus Petitioner's \$50 PNA, from her personal account to the QIT in September 2020. ID at 6. As a result, two deposits of \$2,583 were made in the month of September 2020, one on September 9, 2020, representing the balance of Petitioner's August 2020 Social Security payment, minus Petitioner's \$50 PNA, and a second deposit on September 28, 2020, representing the balance of Petitioner's September 2020 Social Security payment, minus Petitioner's \$50 PNA. 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 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). Accordingly, J.B.’s failure to deposit Petitioner’s August Social Security payment into the QIT until September 2020 results in the funds being considered a resource that were inappropriately deposited into the QIT, additionally rendering the QIT funding for September 2020 improper.

The Initial Decision further determined that because J.B. did not deposit Petitioner’s August 2020 Social Security payment into the QIT in August 2020, the QIT was not properly funded in August 2020. ID at 8. I additionally concur. 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. J.B.’s failure to deposit Petitioner’s August 2020 Social Security payment into the QIT before the end of the month in which it was received, additionally results in the QIT not being properly funded in August 2020.

I am compelled to comment on the Initial Decision’s citation to a website from the American Council on Aging (ACOA) regarding QIT funding. ID at 10-11. According the website that organization is funded by Eldercare Resource Planning LLC, a Medicaid planning company. See <https://www.eldercareresourceplanning.org/services/medicaid-planning>. Regardless of accuracy, a private company’s website cannot be considered a

source for Medicaid rules in New Jersey.

In a letter dated September 9, 2021, the Petitioner in this matter took exception to the September 2, 2021 Initial Decision, asserting that an Order of Extension was never provided in relation to the issuance of the June 22, 2021 Order of Remand. Petitioner alleges that because no proof that an Order of Extension was ever provided to Petitioner, the March 25, 2021 Initial Decision became final, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8. Petitioner's arguments are misplaced. On April 23, 2021, I signed an Order of Extension, N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, extending the time period to issue my decision in this matter from May 10, 2021 to June 24, 2021. The Order of Extension was then countersigned by Acting Director and Chief Administrative Law Judge, Ellen S. Bass, on April 26, 2021. Accordingly, the time period to issue my previous decision was extended until June 24, 2021 and was subsequently issued on June 22, 2021, prior to the extended deadline. Accordingly, the March 25, 2021 Initial Decision was not adopted as the Final Agency Decision in this matter, and was appropriately remanded for further proceedings in accordance with the June 22, 2021 Order of Remand.

Thus, for the reasons set forth above and those contained in the September 2, 2021 Initial Decision, I FIND that Petitioner's QIT was not properly funded for the months of June, July, August, and September 2020 and as previously found under the June 22, 2021 Order of Remand, I FIND that Petitioner's QIT was properly funded for the months of April and May 2020. However, the record is unclear regarding whether MCDSS made a determination related to Petitioner's resource eligibility, pursuant to N.J.A.C. 10:71-4.5(c), and it additionally appears that MCDSS requested information related to an investment account held by Petitioner and a potential transfer of assets that occurred between March and April 2020, as set forth in the September 9, 2020 and September 25, 2020 verification letters. As a result, a full eligibility determination needs to be made in this matter prior to establishing Petitioner eligible for benefits. Therefore, I FIND that MCDSS should process Petitioner's application

to determine if she is eligible for Medicaid benefits.<sup>2</sup>

THEREFORE, it is on this 30th day of NOVEMBER 2021

ORDERED:

That the Initial Decision is hereby ADOPTED; and

That this matter is RETURNED to Monmouth County Division of Social Services to determine Petitioner's eligibility in accordance with this Final Agency Decision.



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

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<sup>2</sup> It is unclear at this time whether Petitioner is both income and resource eligible for benefits, but she may fall under the current maintenance of effort if eligibility is established. Specifically, the Families First Coronavirus Response Act signed into law on March 18, 2020 bars all Medicaid terminations during the course of the public health emergency caused by COVID-19. All individuals enrolled in Medicaid as of March 2020 will have continued benefits, until the last day of the month when this public health emergency is officially ended.