

excess resources as well as her Social Security and pension benefit to pay for her assisted living bill while she awaits the penalty imposed due to her transfer of \$48,400 to an irrevocable trust. ID at 3, Exhibit BB.¹ Petitioner does not appear to contest that she is subject to a penalty – only that she should be granted Medicaid eligibility so that the penalty could commence.

Medicaid is a federally-created, state-implemented program designed, in broad terms, to ensure that qualified people who cannot afford necessary medical care are able to obtain it. See 42 U.S.C.A. § 1396, et seq., Title XIX of the Social Security Act (“Medicaid Statute”). The overarching purpose of the Medicaid program is to provide benefits to qualified persons “whose income and resources are insufficient to meet the cost of necessary medical services.” 42 U.S.C.A. § 1396-1. It “is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services.” Atkins v. Rivera, 477 U.S.154, 156 (1986). In setting up the Qualified Income Trust (QIT) the federal courts described situations where individuals in nursing homes had incomes that were “too low to enable them to pay their own nursing home costs, but too high to qualify for Medicaid benefits.” Miller v. Ibarra, 746 F.Supp. 19 (1990).

The type of financial planning used by Petitioner is called “half-a-loaf” where a Medicaid applicant gifts around half of their assets while using the remaining assets to pay for care during the transfer penalty. The Deficit Reduction Act of 2005 specifically sought to put an end to this planning by delaying the transfer penalty until the applicant was otherwise eligible for Medicaid. See N.M. v. Div. of Med. Assist. & Health Servs.,

¹ This irrevocable trust is not part of the record. It is unclear if the terms of the trust were reviewed prior to the denial.

405 N.J. Super. 353. 362-63 (App. Div.), certif. denied, 199 N.J. 517 (2009) (explaining the Congressional intent behind the enactment of the DRA). To that end, the penalty commences only when individual becomes Medicaid eligible and would be receiving institutional level of services covered by Medicaid but for the penalty period. See 42 U.S.C.A. 1396p(c)(1)(d)(i).

Petitioner's income totals \$10,053 a month from July 2021 through November 2021 based on the five month annuity paying her \$7,600 per month. ID at 3. She is seeking to have the penalty begin in September 2021 and use the resource of the annuity to augment her monthly income to cover the cost of the assisted living during the penalty period.

Assisted living facilities are considered community placements and are available to Medicaid eligible individuals under a federal waiver that permits the expansion of services. Unlike nursing homes, individuals in an assisted living facility are responsible to pay their room and board costs. See New Jersey FamilyCare Comprehensive Waiver. https://www.state.nj.us/humanservices/dmahs/home/NJFC_1115_Amendment_Approval_Package.pdf and www.nj.gov/humanservices/does/forms/PR-2_inst.

The cases cited in the Initial Decision turned on procedural issues. In *H.H. v. Div. of Medical Assistance and Health Services*, the remanded matter determined that Petitioner's eligibility could be established based on the record of expenses produced in the later proceedings. See *H.H. v. Div. of Medical Services* OAL Dkt. No. 14643-2019 Final Agency Decision (August 18, 2020). Additionally, reliance on *C.M. v. Middlesex Cty. Bd. of Soc. Servs.*, OAL Dkt. No. HMA 09650-19, Final Decision (May 12, 2020) is not

warranted due to the overarching procedural and evidentiary deficiencies noted in both the Initial and Final Agency Decisions which upheld the denial.

To that end, I must note that the additional evidence presented at the hearing as well as the apparent acknowledgement by Middlesex County that Petitioner met nursing home level of care contradicts the finding that the assisted living facility was not medically necessary. ID at 8. If Petitioner had been found ineligible under a pre-admission screening (PAS) "which demonstrates that the recipient requires, at a minimum, the basic NF services described in N.J.A.C. 8:85-2.2", she would have been denied for having income over the Medicaid standard. See N.J.A.C. 8:85-2.1(a). A finding that she meets nursing home level of care permits her income to be applied against a higher standard and, should her income exceed that limit, permits her to use a Qualified Income Trust to obtain Medicaid eligibility. See 42 U.S.C. § 1396p(d)(4)(B). Medicaid Communication 14-15. Nothing in the record supports such finding.

In reviewing the record regarding the costs and due to the uncontested determination that Petitioner meets nursing home level of care, I am more persuaded that Petitioner's medical costs, even using the semi-private rate, are not covered by her income. However, the record is incomplete with regard to other factors so that the eligibility determination needs to continue at Middlesex County.

THEREFORE, it is on this ^{1st} day of JUNE 2022,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Middlesex County shall continue to determine Petitioner's eligibility.



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