



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

SARAH ADELMAN
Commissioner

GREGORY WOODS
Assistant Commissioner

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

H.J.,

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 01821-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), 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 November 7, 2024, in accordance with an Order of Extension.

This matter arises from the January 9, 2024 denial of Petitioner's Medicaid application due to their failure to provide information that was necessary to determine eligibility, being over income and being over resourced. The Initial Decision affirmed the denial in this matter. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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 (\$2,523 in 2022 and \$2,742 in 2023) 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 specific Post-Eligibility Treatment of Income and to pay for the Medicaid beneficiary's cost share.

Med-Com No. 14-15.

Moreover, both the County Welfare Agency (CWA) and the applicant have responsibilities with regard to the application process. N.J.A.C. 10:71-2.2. Applicants must complete any forms required by the CWA; assist the CWA in securing evidence that corroborates his or her statements; and promptly report any change affecting his or her circumstances. N.J.A.C. 10:71-2.2(e). The CWA exercises direct responsibility in the application process to inform applicants about the process, eligibility requirements, and their right to a fair hearing; receive applications; assist applicants in exploring their eligibility; make known the appropriate resources and services; assure the prompt accurate submission of data; and promptly notify applicants of eligibility or ineligibility. N.J.A.C. 10:71-2.2(c) and (d). CWAs must determine eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days N.J.A.C. 10:71-2.3(a) and 42 CFR § 435.912. The time frame may be extended when documented exceptional circumstances arise preventing the processing of the application within the prescribed time limits. N.J.A.C. 10:71-2.3(c). The regulations do not require that the CWA grant an extension beyond the designated time period when the delay is due to circumstances outside the control of both the applicant and the CWA. At best, the extension is permissible. N.J.A.C. 10:71-2.3; S.D. v. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013).

A QIT was set up for the Petitioner's benefit by their niece, C.H., on or about April 24, 2018. ID at 3. The QIT lists the sources of income as New York City Employees' Retirement System (NYCERS) and "NJ Social Security". Ibid. In accordance with the QIT, a TD Bank account was created to hold the funds of the QIT. Ibid. Petitioner also has a separate account with the Municipal Credit Union (MCU). Ibid. During the relevant time period, the Petitioner was receiving \$2,310 per month in Social Security benefits (SS) and \$2,672.42 from their pension with NYCERS for a total of \$4,982.42 per month.

Id. at 4. The income from NYCERS and SS is direct deposited into the MCU account each month. Ibid. In most months, both sources of income are received at the end of the month - the NYCERS income is received on or about the last day of each month, and the SS income is either received on the last day of the month or one of the first days of the month. Ibid.

Here, a Medicaid application was filed on Petitioner's behalf by their Designated Authorized Representative (DAR) with the Middlesex County Board of Social Services (Middlesex County) on September 15, 2023. Ibid. Subsequently, on or around November 13, 2023, the Agency sent a Request for Information (RFI) letter to the Petitioner requesting certain information. Ibid. The Agency received all the documents and information from the Petitioner that it requested except for one piece of information: an explanation of a specific transaction on the MCU account from October 23, 2023, in the amount of \$4,974. Ibid. The Agency denied the Application on January 9, 2024, for failure to provide requested information in a timely manner, for excess income, and for excess resources. Ibid.

The monthly statements from the MCU account show that the Petitioner's monthly income was above the maximum permitted amount of \$2,742 per month for the months of August 2023, October 2023, and November 2023, but not September 2023, or December 2023. Id. at 5. Furthermore, the monthly statements from the MCU account show that the balance of the MCU account was over \$2,000 on the first of each month, and as such the Petitioner was also over the maximum monthly resource limit of \$2,000 per month for the months of August 2023, through December 2023. Ibid. Specifically, the monthly balances of the MCU account as of the first day of each month were as follows: \$3,346.46 (August 1, 2023); \$5,569.38 (September 1, 2023); \$8,241.80 (October 1, 2023); \$2,909.22 (November 1, 2023); and \$5,218.64 (December 1, 2023). Moreover,

the exact amounts of the income sources were not deposited into the QIT in the same month that it was received.

Compliance with federal law is shown when the respective bank statements prove that a QIT is funded as described in the trust documents. S.A., HMA 09983-19, Final Decision at 3. The law and regulations require the entire amount of each income source listed on the QIT and Schedule A to be placed into the QIT. See also, NJ FamilyCare Aged, Blind, Disabled Programs, Qualified Income Trust Frequently Asked Questions. Updated March 2018, Important Reminders for Trustees, https://www.state.nj.us/humanservices/dmahs/clients/QIT_FAQs.pdf (last visited August 7, 2024) (explaining that "[i]n order to ensure continued eligibility, the QIT bank account must be funded every month according to the QIT document. Benefits will be lost in any month that the QIT account is not funded properly.>").

The Initial Decision upholds the denial, and I agree. The Petitioner's QIT states that the trust would be funded with the full amount of their monthly NYCERS pension and SS benefits in the month that the funds are received. ID at 9. A comparison of the MCU account statements, TD Bank statements, and the QIT document reveals that the income received each month does not align with the transfers to the petitioner's QIT. The ALJ found that Petitioner failed to prove that the QIT was properly funded, and as such the exclusion of petitioner's income for those months is void. Ibid. Because of the improper funding of the QIT, petitioner's full income is countable for the respondent's eligibility determination. Petitioner's income received in the months of October 2023, and November 2023, was over the maximum allowable limit of \$2,742, however, due to the timing of when SS actually made the direct deposit into the Petitioner's account, the income received by petitioner in September 2023, was below the maximum allowable limit, because the September SS benefit was received on August 30, 2023. However,

regardless of whether the petitioner's income exceeded the maximum allowable limit each month, their countable resources exceeded the maximum allowable monthly limit of \$2,000 each month from August 2023 through December 2023. Because the Petitioner failed to prove that the QIT was properly funded, they were not resource eligible as required by N.J.A.C. 10:71-4.1, -4.2, and -4.5.

THEREFORE, it is on this 6th day of NOVEMBER 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED in accordance with this decision.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services