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

E.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

MIDDLESEX COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 10386-23

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 March 7, 2024, in accordance with an Order of Extension.

This matter arises from the May 10, 2023 denial of Petitioner's Medicaid application due to his failure to provide information that was necessary to determine eligibility and being over income. Specifically, Petitioner's application was denied as a result of failing to provide documentation showing that a Qualified Income Trust (QIT) was

created and properly funded, and as a result of the QIT not being properly funded, Petitioner's income exceeded the income limit to qualify for benefits. The Initial Decision affirmed the denial in this matter. Based upon my review of the record, I hereby REVERSE the findings and conclusions of the Administrative Law Judge (ALJ) and REMAND the matter for additional proceedings in accordance with this decision.

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).

Here, a Medicaid application was filed on Petitioner's behalf by his Designated Authorized Representative (DAR) with the Middlesex County Board of Social Services (Board) on March 27, 2023. Petitioner's DAR submitted a QIT document in support of his

application, which was signed by the Grantor and Trustee and notarized on May 10, 2022. R-4. The only funding source listed on the "Trust Funding" section of the QIT document was "Social Security." Ibid. There was no Schedule A attached to the QIT document submitted with the application. Additionally, the Social Security funding source was only listed on the trust funding section of the QIT document. The QIT document also did not state an address for the initial trustee, nor did it name a successor trustee. On March 31, 2023, the Board sent a request for information (RFI) to Petitioner, asking for verification that a QIT had been established, along with documentation proving that the QIT was funded properly for every month that eligibility was needed. R-2.

In response, Petitioner's DAR sent copies of checks, bank statements, and two separate Schedules A to the QIT document to the Board on April 4, 2023. P-1. However, neither Schedule A was dated, and it is unclear from the record when either of these Schedules A were executed and made effective. Ibid. The submitted bank statements showed deposits that were made into the bank account for the QIT that totaled the amount for Petitioner's pension and Social Security. Additionally, while Petitioner did not submit a new QIT document listing the pension as a funding source, he did include two different Schedules A that listed both Social Security and pension as funding sources. P-1. The first Schedule A listed Social Security in the amount of \$2,265 and pension in the amount of \$2,096.04. The second Schedule A listed the same funding sources, but set forth the Social Security amount at \$2,482, representing the annual increase in Petitioner's monthly Social Security payment.

By letter dated May 10, 2023, the Board denied Petitioner's application, stating that Petitioner failed to provide information that was requested and was over income. R-3. The Board contended that Petitioner's failure to properly include his pension as a funding source on the QIT document, despite it being listed in a later submitted Schedule

A, rendered the QIT as unverified. Thus, the Board contended that this failure to include the pension resulted in Petitioner being over the income eligibility limit, as neither of Petitioner's sources of income could be excluded from his income calculation. Specifically, the Board contends that the QIT did not include the word "pension" in the section titled, "Trust Funding," and only included Petitioner's monthly Social Security payment.

The Initial Decision upholds the denial, and I disagree. On March 31, 2023, the Board sent an RFI requesting that Petitioner, "submit verification that you have established a . . . QIT, . . . along with documentation proving that the QIT has been properly funded for each and every month when eligibility is need[ed]." R-2. Petitioner responded on April 4, 2023 with two Schedules A, (presumably, an initial Schedule A and an amended one), and copies of bank statements and checks. P-1 and R-4. A QIT document had already been submitted in support of the March 27, 2023 application. However, that document failed to contain a Schedule A to the QIT document.

In the Initial Decision, the ALJ determined that while Petitioner's DAR later submitted a Schedule A that listed Petitioner's pension, because the DAR testified that when the QIT was created there was no intention to include the pension as a funding source, it was not properly included in the QIT. Medicaid Communication No. 14-15 enumerates the requirements for a valid QIT. There is no language in Medicaid Communication No. 14-15, or accompanying regulations that prohibit a QIT document and Schedule A from being amended. In fact, QIT documents and Schedules A can and are routinely amended. As long as the Schedule A lists the sources of funding to be deposited into the QIT, those funding sources are deposited into the QIT in the month they are received, and the Schedule A was amended before the updated sources of funding were deposited in the QIT bank account, the QIT may be determined to be

properly funded. To that end, I am REVERSING the Initial Decision's finding that Petitioner failed to provide the requested information by not providing a new QIT document. A new QIT document was never specifically requested by the Board nor was a new QIT necessarily required to ensure the QIT was properly funded.

Further, I am REVERSING the Initial Decision on the basis that it cannot yet be established whether the QIT was properly funded, and therefore, whether Petitioner was over the income limit to qualify for benefits. Specifically, there still remains the question of when the initial Schedule A created and when it was amended. If Petitioner's monthly Social Security and pension payments were both deposited into the QIT prior to the Schedule A being amended to include both of these monthly payments as funding sources for the QIT, the QIT could not be considered properly funded for the months prior to the Schedule A being amended. In this case, no Schedule A was included with the QIT document that was submitted along with the March 27, 2023 Medicaid application. Additionally, Petitioner's DAR testified that when the QIT was created, there was no intention to include the pension as a funding source. As such, it is unclear when the original Schedule A was created and whether it included both of Petitioner's sources of income as funding sources for the QIT. It is additionally unclear when the amended Schedule A was created.

The Schedules A admitted into the record do not contain any dates in the body of the documents. R-4. While the words "December" and "April" are hand written on the Schedules A, Petitioner's DAR testified that any hand written language on the documents was done by the Board. There are what look to be fax dates on the borders of the Schedules A with a date of May 16, 2022. Ibid. However, this date is not in the body of the actual Schedules A, and looks like it might have been added after the fact. This date is the same on both Schedules A, which calls into question the authenticity of the

documents. It is unlikely that Petitioner created two Schedules A on the same day in anticipation of an increase in Petitioner's monthly Social Security that did not start until 11 months after the QIT creation date of May 10, 2022. Moreover, the fact that Petitioner's DAR testified that there was no intention to include pension funds in the QIT when it was executed on May 10, 2022, makes it unlikely that a Schedule A, including Petitioner's monthly pension payments, would be created only six days later on May 16, 2022.

Consequently, I am REMANDING the matter to give Petitioner the opportunity to provide credible documentary evidence that establishes when the Schedules A were created and what sources of funding were used to fund the QIT during each month where eligibility is sought, including when the pension payments began to be deposited into the QIT with Petitioner's monthly Social Security payment. Petitioner shall also provide credible documentary evidence that shows where the monthly payments being made from Social Security and from his pension were originally deposited and how and when they were deposited into the QIT each month.

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

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED in accordance with this decision.



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