

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	
U M)	OAH No. 19-0414-SNA
<hr style="width: 40%; margin-left: 0;"/>)	Agency No.

DECISION

I. Introduction

U M submitted a recertification application (“Application”) for Supplemental Nutrition Assistance Program (SNAP) benefits, commonly called “Food Stamps.” The Division approved \$19 a month in Food Stamp benefits for Mr. M’s household of one. Mr. M appealed, asserting that the Division should have only counted \$1,310 of his monthly social security benefits as income – not the gross amount of \$1,906 -- because his social security benefits are deposited directly into an irrevocable Medicaid Qualifying Income Trust (MQIT) and the trustee only distributes \$1,310 per month to him.

A telephonic hearing commenced on June 4, 2019. At the hearing, the Division was represented by Assistant Attorney General Alex Hildebrand; Mr. M was represented by D Q from Alaska Legal Services. Jeff Miller, an Eligibility Technician, testified on the Division’s behalf and Mr. M testified on his own behalf. The record was reopened to request certain information that Mr. M had mentioned in his testimony; the record closed on June 17, 2019.

The Division’s determination that the gross amount of social security income deposited into the irrevocable trust should be countable income in the month it is received by the trust is REVERSED. Instead, the Division is to redetermine Mr. M’s Food Stamp benefits based on the monthly income he receives from the trust, less applicable deductions.

II. Facts

U M is disabled man.¹ Since 2015, his social security disability benefits have been paid directly to a MQIT, which is an irrevocable trust.² Mr. M’s MQIT has been approved by the

¹ M Position Statement, at p.1.

² Exh. 1.1—1.13. This type of trust is also known as a “Miller Trust.” See Exh. 1.1. Since the trust is irrevocable, once the money goes into the trust, Mr. M cannot get it back. See M Position Statement, at p. 1; see also Exh. 1.1-1.13. The Division noted that under the terms of his MQIT trust, Mr. M could direct the social security payments that are currently being paid into the trust elsewhere; however, he has not done so to date. See Testimony of Jeff Miller; see also Presentation of Alex Hildebrand, Assistant Attorney General. The MQIT, by its terms, provides that upon the termination of the MQIT and after any remaining reasonable legal and administrative expenses related to the establishment and maintenance of this trust, the Trustee is directed

Division, is administered by a trustee, and is supervised by the Court.³ Under the terms of the MQIT, the trustee is only permitted to give Mr. M a sum of money each month that will enable him to maintain his Medicaid eligibility.⁴ At the time of his Food Stamps Application, that amount was \$1,310 per month.⁵ The trustee uses the remaining amount in the trust -- approximately \$600 a month -- to pay for Mr. M's medical expenses not covered by Medicaid, social services, certain other expenses made directly to third-party vendors which do not count as in-kind income, and income tax, administrative or attorney's fees incurred by the MQIT.⁶ If these other allowable expenses are less than the remaining amount in the trust, that money is accumulated in the trust.⁷

A. The Division's Treatment of Mr. M's SSI Income

The Division processed Mr. M's Application on April 22, 2019.⁸ In his application, Mr. M noted that his monthly social security benefits of \$1,910 were deposited directly into a MQIT each month and that he was only given \$1,310.00 to spend by the trustee.⁹ Because of the MQIT, Mr. M stated on his application that "[o]nly \$1,310 should be counted as income for purposes of SNAP benefits."¹⁰ However, the Division disagreed. Instead, the agency representative determined that \$1,906 was Mr. M's gross monthly income and used that amount less certain deductions to determine his Food Stamp allotment.¹¹

to reimburse the Alaska Division of Health Care Services (or another state's Medicaid agency) up to the amount of any expenditures the Alaska Medicaid program (or the Medicaid program of another State) has expended funds on Mr. M's behalf. Any remaining funds after that disbursement would be delivered to Mr. M's estate. *See* M Position Statement, at p. 1; *see also* Exh. 1.8.

³ M Position Statement, at p. 1.

⁴ *See* Exh. 1.2. By using a Miller Trust, an individual who might otherwise be "over income" can qualify for Medicaid. *See* L. Frolik, The Law of Later-Life Healthcare and Decision Making (2d ed., 2018). Under Alaska Medicaid regulations, a payment that "would otherwise be available to the applicant or recipient that is deposited directly into a recognized Medicaid trust account . . . is not income for the purposes of determining Medicaid eligibility." 7 AAC 100.606(a).

⁵ M Position Statement, p. 1; Division's Position Statement, at p. 2.

⁶ Pursuant to the terms of Mr. M's MQIT, the approximately \$600 each month which is not dispersed to Mr. M may be used to pay bills or expenses on his behalf only if those disbursements are made directly to third-party vendors and such disbursements do not count as in-kind income under the applicable regulations of the SSI program. Such expenses may include medical care and services not covered by Medicaid, social services and excluded non-liquid resources under 20 CFR 416.1210 *et seq.* (other than food or shelter). *See* Exh. 1.2-1.3.

⁷ Exh. 1.3.

⁸ Division's Position Statement, at p. 2.

⁹ The Division's representative used a state online query response computer link with the social security administration and determined that Mr. M's social security benefits were \$1906 a month, not \$1,910. *Cf.* Division's Position Statement, p. 2 & Exh. 4 *with* Exh. 2.6.

¹⁰ Exh. 2.6

¹¹ *See* Exhs. 5 & 6-6.1. In his Application, Mr. M listed \$770 a month in rental expenses and \$60 a month for electricity. *See* Exh. 2.9. The agency representative contacted X M, Mr. M's brother and the trustee of the MQIT, and verified that Mr. M was paying \$770 in rent, \$60 for electric, and \$532.57 in medical

On April 23, 2019, the Division notified Mr. M his Application had been approved and that he was eligible for \$19 a month in Food Stamp benefits.¹² Mr. M appealed the Division's determination on the grounds that the Division had incorrectly counted his income.¹³ He noted that his gross social security benefits were directly deposited into the MQIT. Accordingly, he argued that the Division should not be counting the full amount of social security benefits deposited into the MQIT but instead should only be counting as income the \$1,310 which he is receiving each month from the MQIT.¹⁴ The Division rejected his argument, citing to a provision in its Food Stamps Manual which states that income deposited into the MQIT is countable income for determining Food Stamp benefits the month it is received *by the trust*.¹⁵

B. The Hearing

At the hearing, counsel for both parties acknowledged that this case involves a purely legal issue – *i.e.*, whether the gross amount of Mr. M's social security benefits directly deposited into his MQIT should be countable as income for purposes of determining his Food Stamp allotment.¹⁶ Central to the Division's argument the gross amount is countable income is a section in the Alaska Food Stamp Manual which states that "money deposited into a MQIT is considered income when *received (i.e., prior to it being deposited into the trust account), money withdrawn from the MQIT is not counted as income.*"¹⁷

Mr. M through his counsel argued that he does not receive his gross monthly social security benefits because these benefits are payable and are paid directly to the trust, not to him. Mr. M's counsel noted that the social security benefits going into the trust are never paid to the household unless the trustee disburses the funds to the household consistent with the terms of the trust. Mr.

expenses each month. *See* Division's Position Statement, at p. 2; Exh. 1.1. However, the standard deduction for electricity for the greater Anchorage region is \$107 for a one-person household so that is the amount that the Division used when the Division calculated his Food Stamp allotment. *See* Alaska SNAP Manual, at Addendum 4; Exh. 6. These expenses (rent, electric, and medical expenses) were then deducted from the \$1,906 gross amount of social security benefits paid into the MQIT in order to determine Mr. M's monthly net income for purposes of his Food Stamp allotment.

¹² Exhs. 5 & 12.

¹³ Exh. 7.

¹⁴ Exhs. 2.6 & 8.

¹⁵ *See* Division's Position Statement, at p. 2.

¹⁶ Although there was testimony from Jeff Miller, the Division's witness, regarding how Mr. M's Food Stamp allotment was calculated and some brief testimony from Mr. M about conversations he had with state and USDA representatives concerning his case, the hearing principally involved arguments by counsel on the legal issue of whether the aggregate amount of social security monthly benefits deposited in the MQIT should be deemed income to Mr. M.

¹⁷ Exhs. 8 & 10.2.

M's counsel further noted that 7 C.F.R. §273.9(b)(2)(vi) explicitly addresses the situation here.¹⁸ That provision states that withdrawals from trust funds that are excludable resources under 7 C.F.R. §273.8(e)(8) "shall be considered income in the month received."¹⁹ Accordingly, Mr. M argues that it is only the \$1,310 monthly withdrawal from the MQIT that Mr. M receives which should be considered to be income, not the gross amount of SSA benefits deposited into the trust each month.²⁰

III. Discussion

At the outset, it must be noted that the Alaska Food Stamp Manual ("Manual") is not a statute or a regulation; it is merely guidance to case workers.²¹ As the Manual notes, there are federal regulations governing the Food Stamps Program under 7 C.F.R. 271-274.²² These regulations clearly spell out how when disbursements from a trust which is an excludable resource under 7 C.F.R. §273.8(e)(8) are to be deemed "income."²³

A. Is the Entirety of Social Security Benefits Deposited Directly into an MQIT Countable as Income to a Food Stamps Applicant/Recipient?

It is undisputed that if Mr. M directly received \$1,906 social security benefits each month, that money would be income for SNAP purposes.²⁴ However, that money is not paid directly to him.²⁵ Instead, these benefits are payable and paid to the trust, not to Mr. M.²⁶

1. Withdrawals from the MQIT Should Be Treated as Income in the Month Received

The Division is seeking to treat the aggregate amount of the social security benefits the MQIT receives each as income to Mr. M.²⁷ However, Mr. M only receives \$1,310 of the \$1,906 in

¹⁸ Presentation of Colleen Pawling.

¹⁹ Exh. 9.2.

²⁰ Presentation of Ms. Pawling.

²¹ Alaska SNAP Manual (2007), at 600.

²² Alaska SNAP Manual (2007), at 600.

²³ See 7 C.F.R. §273.9(b)(2)(vi).

²⁴ See M Position Statement, at p. 2; see also Testimony of Mr. Miller.

²⁵ Although the Division argues that the aggregate amount of social security benefits is income to Mr. M pursuant to 7 C.F.R. §273.9(b)(2)(ii), the weight of the evidence establishes that these benefits are being paid directly to the trust. See Presentation of Ms. Pawling; Presentation of Alex Hildebrand.

²⁶ See M Position Statement, at p. 2; see also Testimony of Mr. M (stating that he provided the Division with documents showing that his social security benefits are deposited directly into the trust); Presentation of Ms. Q.

²⁷ See Division's Position Statement, at p. 2; see also Presentation of Alex Hildebrand, Assistant Attorney General.

social security benefits paid each month to the trust.²⁸ The remaining funds are used to pay his medical bills, trust management expenses, or are held in the trust for such expenses in the future.²⁹

According to the Division, an MQIT approved by the Division is an exempt, or excludable, *resource* for Food Stamp purposes.³⁰ Although an excludable resource, the federal Food Stamp regulations provide that “unearned income” includes monies which are *withdrawn* from trust funds considered to be excludable resources under 7 C.F.R. §273.8(e)(8).³¹ Such trust withdrawals “shall be considered income *in the month received*, unless otherwise exempt under the provisions of 7 C.F.R. 273.9(c).”³² Thus, this excludable resource becomes countable income when the money from the trust is received by the Food Stamps applicant or recipient.³³

It is undisputed that Mr. M receives \$1,310 each month from the MQIT.³⁴ Pursuant to 7 C.F.R. §273.9(b)(2)(vi) and §273.8(e)(8), this sum is properly countable as income for SNAP purposes.³⁵ However, monies which remain in the irrevocable trust are not income to Mr. M until he receives that money from the trust.³⁶

2. Vendor Payments Made by the Trust are Not Considered Income to Mr. M

A related question is whether amounts the trustee pays to third parties on Mr. M’s behalf should be treated as income to Mr. M.³⁷ In this case, the trustee is authorized to “pay bills or expenses” on Mr. M’s behalf from income to the trust that has not been distributed to Mr. M.³⁸

Under 7 C.F.R. 273.9(b), household income for determining Food Stamp eligibility “shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.” Section (c) identifies those items which “shall be excluded from household income.”³⁹

²⁸ Exh. 2.6; *see also* Division’s Position Statement, at p. 2.

²⁹ Exh. 1.2-1.3.

³⁰ *See* Testimony of Mr. Miller. The parties deemed Mr. M’s MQIT to be an excludable resource for Food Stamps, so this decision expresses no opinion regarding whether the MQIT, in fact, meets the requirements enumerated in 7 C.F.R. 273.8(e). *See* Exh. 10.1 & M Position Statement, at p. 3.

³¹ *See* 7 C.F.R. 273.9(b)(2)(vi).

³² 7 C.F.R. §273.9(b)(2)(vi)(emphasis added).

³³ 7 C.F.R. §273.9(b)(2)(vi).

³⁴ *See* Exh. 2.6. The Division did not contest Mr. M’s assertion that he was receiving \$1,310 a month from the MQIT.

³⁵ *See* 7 C.F.R. §273.9(b)(2)(vi) & §273.8(e)(8).

³⁶ *See* 7 C.F.R. §273.9(b)(2)(vi).

³⁷ The MQIT by its terms contemplates that income to the trust which is not disbursed to Mr. M may be disbursed to pay bills or expenses on his behalf to third-party vendors if such disbursements are made directly to third-party vendors. *See* Exh. 1.2.

³⁸ *See* Ex. 1.2.

³⁹ 7 C.F.R. §273.9(c).

One such exclusion is “any . . . benefit which is not in the form of money payable directly to the household, including . . . certain vendor payments.”⁴⁰

A vendor payment is defined as a “money payment made on behalf of a household by a person outside of the household directly to either the household’s creditors or to a person or organization providing a service to the household.”⁴¹ Section 7 C.F.R. 273.9(c)(1)(vii) excludes from income “payment to a third party on behalf of a household using funds *that are not owed to the household.*”⁴²

When the trust pays Mr. M’s medical bills or expenses for the trust, such payments are for the benefit of the household – *i.e.*, Mr. M. However, Mr. M’s social security benefits are directly deposited into an irrevocable trust and thus are not “*owed to the household*” beyond the disbursements made in such amounts as to maintain Mr. M’s Medicaid eligibility in accordance with the terms of the MQIT.⁴³ Currently, that disbursement is \$1,310 a month. The remaining social security benefits – *i.e.*, approximately \$600 a month -- are not “owed to the household.” Consequently, the trustee of the MQIT may use those funds to pay third-party vendors who are creditors or provide services to Mr. M now or later. However, such third-party vendor payments are not considered household income because these payments are not made from funds “owed to the household.”⁴⁴ Accordingly, the approximately \$600 a month that remains in the trust each month after the disbursement to Mr. M does not get treated as income for purposes of determining his Food Stamp allotment.

One other court has addressed the issue of whether a distribution made by the trustee of an irrevocable trust to third parties counts as income to the trust beneficiary for the purpose of determining Food Stamp benefits.⁴⁵ In *Petition of Kelly Hagenbuch*, the New Hampshire Supreme Court concluded that the terms of the trust did not establish that the petitioner had the legal right to receive the funds used to pay third parties for trust expenses and legal fees.⁴⁶ The Court opined:

⁴⁰ 7 C.F.R. §273.9(c)

⁴¹ 7 C.F.R. §273.9(c)(1).

⁴² 7 C.F.R. §273.9(c)(1)(vii)(emphasis added).

⁴³ *See* *Petition of Kelly Hagenbuch*, 153 A. 3d 913 (N.H. 2017) (stating that although a person may be the beneficiary of the Trust, until the trustee disburses trust funds that the petitioner has the legal right to receive, the funds are not “owed to the household”).

⁴⁴ 7 C.F.R. §273.9(c)(1) & (c)(1)(vii).

⁴⁵ *See Hagenbuch*, 153 A. 3d, at 916.

⁴⁶ *See Hagenbuch*, 153 A. 3d, at 917(stating that the trustee had the sole discretion to make payments from the trust, either to the petitioner or to third parties for the petitioner’s benefit and to pay trust expenses

[O]nce the trust qualifies as an excludable resource, *the funds in the trust are not considered resources of the household*, regardless of whether the trust in question was funded by the household or by a nonhousehold member. Likewise, the [federal] regulations provide a single framework for determining when funds withdrawal from an excluded trust are treated as income.⁴⁷

The New Hampshire Supreme Court further noted that when 7 C.F.R. §273.9(c) and 273.9(b)(2)(vi) are read together, those provisions contemplate that money in an excluded trust “will not be attributed to the beneficiary unless and until a non-exempt withdrawal is made.”⁴⁸

IV. Conclusion

Based on the federal Food Stamp regulations, the Division should have only counted the amount that the trust distributes to Mr. M – here, \$1,310 – as countable income for Food Stamps. Accordingly, the Division’s decision that Mr. M is only entitled to \$19 a month in Food Stamps is REVERSED and the case is REMANDED to the Division to determine the appropriate Food Stamp allotment that Mr. M should receive in light of this decision. Mr. M retains his right to appeal the determination of his Food Stamp allotment after the Division has recalculated his Food Stamp benefits.

Dated: July 1, 2019

By: Signed
Name: Kathleen A. Frederick
Title: Administrative Law Judge

with trust assets; in contrast, the petitioner could not access trust assets, amend the trust’s terms, terminate the trust or require payments from the trust).

⁴⁷ Hagenbuch, 153 A. 3, at 918 (emphasis added).

⁴⁸ Hagenbuch, 153 A. 3d, at 918.

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 16th day of July, 2019.

By: Signed _____
Name: Jillian Gellings
Title: Project Analyst
Agency: Office of the Commissioner, DHSS

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