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UTILIZING THE QUALIFIED INCOME TRUST TO REDUCE THE INCOME OF A MEDICAID APPLICANT OR RECIPIENT

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Medicaid is a joint federal-state program that provides medical assistance to those individuals who meet very stringent income and asset limitations. Typically, when an individual attempts to qualify for Medicaid to assist with expenses associated with nursing home care, an emphasis is placed on asset limitations, even though an individual must also meet an income eligibility test as well. Put simply, the income test can best be summarized as follows: Individuals receiving the nursing home Medicaid benefit must have medical expenses that exceed their income and can have no more than three times the poverty level of gross income in any given month. Currently, that figure is $1,656 of income per month.

For an unmarried individual who is below that amount of income, all income, minus a $40 personal needs allowance, will be used to pay for her care. To demonstrate, assume an individual receives $1,500 in gross monthly income and also assume that her nursing home care costs $4,000 per month. The first priority is ensuring the individual receives her personal needs allowance of $40. Accordingly, that individual is entitled to keep $40, but would be required to pay the remainder of her income, $1,460 per month, for her nursing home care. Medicaid would pay the remainder of $2,540.

A Qualified Income Trust, also known as a Miller Trust (hereinafter referred to as a "QIT"), allows individuals whose income exceeds the current limit to qualify for Medicaid even though, technically, they earn too much money to qualify. Medicaid basically pretends that income assigned to the trust no longer belongs to the Medicaid recipient. The notion of the QIT is new to Kentucky since it was only implemented in September 2003 and has, since its implementation, caused much confusion for professionals, case workers, and affected individuals and their families.

The major premise behind the QIT is that the Medicaid recipient assigns her right to receive either all income or the income that exceeds the limit to the trust. As an example, if an individual receives $1,000 per month from Social Security and another $700 from a retirement QIT, that individual would be ineligible for Medicaid. However, if a qualified income trust is set up, then the excess income is transferred to the trust. To accomplish this, an individual could either transfer all of her income to the trust or just the $44 which exceeds the income limit. Whether to transfer all of the income or just a portion is really a matter of convenience for the party responsible for making the medicaid recipient's payments. For all single individuals, their income, minus the personal needs allowance, must be used to pay for costs associated with that individual's medical care.

A QIT should be established for those individuals with excess income who are receiving or who wish to receive Medicaid services. While this seems fairly straightforward, it is important that individuals realize that there is no need for such a QIT until the time an individual actually needs to qualify or retain eligibility for Medicaid. Of course, individuals who have excess income will not be able to qualify for medical assistance until the trust is set up and approved by the Department for Medicaid Services.

There are some very stringent requirements for a QIT to be approved by the Department for Medicaid Services.[1] First, the trust must be composed solely of the income of the Medicaid applicant or recipient. This means that the QIT bank account must be started with a zero balance and only income can be placed into the trust. No assets or resources may be placed into the trust. This also means funds which belong to the trust cannot be co-mingled with any other funds or accounts of the Medicaid recipient or her agent. As a practical matter, this requires that a separate account be established for the QIT.

A QIT must also be irrevocable. This means that the trust must not have any provision whereby it could be modified or revoked. This is important because one of the most important requirements of the document establishing the QIT must provide that upon the death of the Medicaid recipient, the Department for Medicaid Services will receive all amounts which remain in the trust, at least up to the amount paid on behalf of the individual by Medicaid.

Funds placed into the QIT may only be expended under two circumstances. The first allowed expenditure is for valid medical expenses, which may also include the patient's liability for nursing home expenses. In the case of a married individual, the funds may also be expended in order to provide the community spouse's income allowance.[2] Even though the regulation provides that those two limited expenditures can be made from the trust, all such expenditures must be approved by the Department for Medicaid Services as allowed expenditures.

The QIT can best be described as a tool which allows individuals who would not otherwise qualify for Medicaid to pretend that certain income does not exist. The QIT is an awkward approach to addressing the problem of excess income, since it would seem much simpler to utilize an expenses versus income approach, where if expenses exceeded income then an individual would qualify. However, that is not the approach which has been authorized under Kentucky law, so it is especially important for those individuals who fall into the category of having excess income, which income is not enough to pay for their own nursing home care, as those individuals may not otherwise receive necessary services or health care.

1. The regulations regarding the establishment of a QIT and the limitations thereon can be found at 907 KAR 1:650, Section 3 (5).
2. The Community Spouse resource allowance is established by procedures set forth in 907 KAR 1:655 and in accordance with the Kentucky Medicaid Operations Manual, Volume X, OM Policy Update No. 03-22.

About Melissa Yates

With a background in customer service, Melissa has a unique ability to understand the needs of her clients and to make them feel comfortable. In fact, the aspect of her law practice in which Melissa most prides herself is her commitment to maintaining client relationships.

With enthusiasm she advocates her clients' causes. Since joining the firm, she has been involved with many areas of the firm's general practice including elder law and municipal law. Melissa also has training in health care law and has completed a mediator training program so that she might better serve the firm's clients.

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