



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
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*Director*

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

**E.R.,**

**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 15021-2018**

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is March 21, 2019 in accordance with an Order of Extension.

The matter arises regarding the termination of Petitioner's Medicaid benefits due to excess resources. Petitioner has been receiving benefits under a home and

community based waiver program since submitting his 2013 application that listed one bank account. Each subsequent redetermination listed the same account. In 2016, Petitioner listed no resources. ID at 2. That year a 1099 form was issued reflecting a gross distribution of \$322,963.66 from an investment account. This distribution was not reported to the Middlesex County Board of Social Services.

On September 10, 2018, Middlesex County terminated Petitioner's benefits based on unreported assets of \$461,344.57 that included two unreported mutual fund accounts that comprised all of the assets, except for about \$1,600 spread over three checking accounts. R-6. At the time of the termination, Petitioner was residing in a nursing home. Yossi Zweig, an employee of Future Care Consultants, appealed the termination through a Designation of Authorized Representative (DAR) dated July 17, 2018.

The Initial Decision upholds the termination. Petitioner is not only presently ineligible for benefits due to excess resources but is also subject to incorrectly paid benefits for the entire time he was receiving benefits. He had access to the funds during the time he was receiving benefits and engaged in financial transactions. Petitioner's representative contends that the recent diagnoses of dementia changed the availability of the resources. However, Petitioner was able to designate Mr. Zweig as his representative in July 2018 and his competency was not at issue at the time he was terminated. A "resource" is defined as "any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his/her support and maintenance." See 20 C.F.R. § 416.1201(a) and N.J.A.C. 10:71-4.1(b). If the individual has the right, authority or power to liquidate the property, it is considered a resource. Ibid. A resource is "countable" for purposes of eligibility determinations if it is "available to the applicant/beneficiary or any person acting on his or her behalf."

N.J.A.C. 10:71-4.1(c)(3) (emphasis added). Inaccessibility is not established by an applicant's disability but is instead established where the beneficiary cannot exercise control over or tap into the resource due to external factors. N.J.A.C. 10:71-4.4(b)(6)(i). Put simply, the inaccessibility rule is inapplicable to situations such as this because there was no legal impediment to Petitioner's resources.

In Chalmers v. Shalala, 23 F. 3d 752 (1994), the Third Circuit found that even though the applicant's schizophrenic mental state precluded her from having actual power or physical ability to liquidate her property interest, the property was considered a resource for purposes of obtaining Supplemental Security Income (SSI) benefits. Chalmers v. Shalala, 23 F.3d 752, 755 (3d Cir. 1994). The court held that the phrase "right, authority or power" is disjunctive and refusing to interpret the phrase as conjunctive. The court went on to find that the word "power" means not only a "mental or physical ability or aptitude" but also "the legal authority" to liquidate resources. Id. at 755. Therefore, if the individual has the legal right to receive the money, any mental or physical disability is immaterial to the eligibility determination. Indeed, as the court noted, since many disabled individuals receive benefits, "such an interpretation would render the provision meaningless." Id.

The New Jersey Superior Court, Appellate Division has agreed with the Third Circuit's Chalmers decision in a case factually similar to the one at bar. In L.S. v. Div. of Med. Assistance and Health Services, this Court held that despite applicant's alleged dementia, she had the "right, authority, or power" to liquidate her assets, making them countable regarding Medicaid eligibility. L.S. v. Div. of Med. Assistance and Health Servs., No. A-0571-04 (App. Div. October 21, 2005). In L.S., the nursing home where L.S. was a resident applied on her behalf for Medicaid benefits. Ibid. The nursing home did not disclose one of the bank accounts on the Medicaid application allegedly

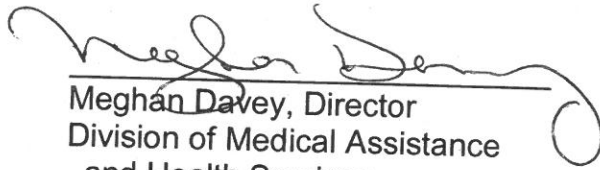
because applicant's dementia made it difficult to acquire all of the necessary information. Ibid. The court held that L.S. "had the legal authority to liquidate her available resources" and upheld the agency's determination that the assets were still available to her despite her alleged dementia.

Thus, I hereby ADOPT the Initial Decision upholding the termination of benefits.

THEREFORE, it is on this <sup>21<sup>st</sup></sup> day of MARCH 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services