

benefits for Petitioner. During Petitioner's September 2020 redetermination, the Bergen County Board of Social Services (BCBSS) discovered, through an asset verification search, that Petitioner had access to a Chase Bank account that he shared with his son, J.P. ID at 2 and R-2. Petitioner did not report this joint bank account to BCSS and only reported a separate Chase Bank account on prior redeterminations. ID at 2. BCBSS determined that between September 1, 2018 and September 30, 2018 and between October 1, 2019 and March 31, 2020, the total balances of the two Chase Bank accounts exceeded the \$4,000 eligibility resource limit. ID at 2 and R-2. For the reasons set forth below and those contained in the Initial Decision, I hereby adopt the findings and recommended decision as they relate to BCBSS appropriately seeking recoupment of Medicaid overpayments from Petitioner and further, return the matter to BCBSS to recalculate the overpayment amount in accordance with this decision.

The record reflects that Petitioner had the right, authority, or power to use the second Chase Bank account found by BCBSS. See N.J.A.C. 10:71-4.1(c). J.P. confirmed that Petitioner was a co-owner of the account and Petitioner's name was placed on the account so that Petitioner had access to the account should J.P. predecease Petitioner. Although J.P. stated that Petitioner was not aware of the account, Petitioner still maintained the ability and authority to use the account because he was a joint owner of the account.

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). In the present matter, the Asset Verification System (AVS) used Petitioner's Social Security number and other identifiers to discover the accounts owned by Petitioner. See Medicaid

Communication NO. 17-16. The AVS search revealed Petitioner's ownership of the unreported Chase Bank account to which he had unrestricted access. R-15. Pursuant to N.J.A.C. 10:71-4.1(d)2, "when a savings or checking account is held by the eligible individual with other parties, all funds in the account are resources to the individual, so long as he or she has unrestricted access to the funds regardless of their source." There is nothing in the record that supports a finding that Petitioner did not have unrestricted access to the unreported bank account. The amount in that account put Petitioner over the Medicaid resource eligibility limit of \$4,000. Thus, Petitioner was not eligible for those months in which his resources exceeded \$4,000, and the recovery of the overpayment is appropriate, pursuant to N.J.A.C. 30:4d-7i and N.J.A.C. 10:49-14.4(b).

I agree that Petitioner was over the resource limit of \$4,000 for every month at issue between September 1, 2018 and September 30, 2018 and between October 1, 2019 and March 31, 2020. However, the Families First Coronavirus Response Act, P.L. 116-127, (FFCRA), which was signed into law on March 18, 2020, bars all Medicaid terminations during the course of the public health emergency (PHE) caused by COVID-19. All individuals enrolled in Medicaid as of March 2020 have had their benefits continued until the last day of the month when the PHE officially ends. As a result of this continuation of benefits under the FFCRA, Petitioner's overpayment charges for March 2020 are prohibited from being recouped, even though Petitioner was over the resource limit at that time. See COVID-19 Frequently Asked Questions for State Medicaid and Children's Health Insurance Program Agencies, question 20, updated January 6, 2021, <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf> (providing that "[a]ny effort to seek recovery against such a beneficiary for the period during which he or she did not meet all eligibility requirements during the PHE would be tantamount to retroactively terminating an individual's enrollment, in violation of section 6008(b)(3) of the FFCRA. . . ."). Accordingly, I FIND that the charges for March 2020 were incorrectly included in the overpayment amount sought by

BCBSS, and as such, I am RETURNING this matter to the BCBSS to recalculate the amount of Petitioner's overpayment.

THEREFORE, it is on this 22nd day of JUNE 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the finding that the BCBSS appropriately sought Medicaid overpayments from Petitioner; and

That the matter is hereby RETURNED to the BCBSS to recalculate the amount of overpayment in accordance with this decision and the FFCRA.



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