

12. During Petitioner's February 2020 redetermination, the Bergen County Board of Social Services (BCBSS) discovered, through an asset verification search, that Petitioner had access to a second TD Bank account that she also shares with A.G. The BCBSS determined that between March 1, 2017 and March 31, 2020, the total balances of the two TD Bank accounts exceeded the \$4,000 eligibility resource limit. R-15. 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 the BCBSS appropriately seeking recoupment of Medicaid overpayments from Petitioner and further, return the matter to the 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 TD Bank account found by BCBSS. See N.J.A.C. 10:71-4.1(c). A.G. confirmed that Petitioner was a co-owner of the account and asserted that Petitioner's name was placed on the account in order to give Petitioner access to the account should something happen to A.G. during her pregnancy. ID at 2. A.G. additionally stated that she did not view this bank account as an asset of Petitioner, but that was an account that Petitioner had access to for the benefit of A.G. and her children. Ibid.

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 TD bank account to which she 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 her 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 many of the months at issue between March 1, 2017 and March 31, 2020. However, the account balances provided by the BCBS show that Petitioner was not over the resource limit for October 2018, November 2018, December 2018, January 2019, and February 2020.¹ R-16. Moreover, 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

¹ Petitioner’s total account balances were \$3,570.16 for October 2018, \$3,697.75 for November 2018, \$3,805.79 for December 2018, \$3,415.36 for January 2019, and \$3,379.65 for February 2019. R-16.

FFCRA. . .”). Accordingly, I FIND that charges for October, 2018, November 2018, December 2018, January 2019, February 2019, and March 2020 were incorrectly included in the overpayment amount sought by the 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 7th day of MAY 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