

determination notice. On August 12, 2020, the matter was transmitted to the Office of Administrative Law (OAL), a hearing was held and an Initial Decision was issued. On March 23, 2021, the Assistant Commissioner remanded the matter to the OAL for evidence and testimony with regard to Petitioner's capacity and Petitioner's resource eligibility effective date. Hearings were held on May 11, 2021 and July 22, 2021. On July 30, 2021, the Initial Decision held that the UCBSS erred in granting a November 1, 2019 effective date and modified the effective date to be September 12, 2019, along with a three-month period of retroactive benefits. For the reasons that follow, I hereby REVERSE the Initial Decision.

On July 8, 2020, the UCBSS determined that Petitioner met the resource eligibility requirements for Medicaid effective April 1, 2020. Participation in the Medicaid program will be denied if the resources of an individual exceed \$2000 as of the first moment of the first day of the month. See N.J.A.C. 10:71-4.5. 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). Petitioner does not argue that his resources were below the \$2,000 limit at any point prior to April 2020. Rather, Petitioner's representative argues that due to his lack of mental capacity, Petitioner's resources were not available to him or anyone acting on his behalf as early as the date of application.

On May 20, 2019, Petitioner was admitted to AristaCare. On August 19, 2019, Petitioner himself signed a DAR form appointing Ita Gutman of AirstaCare to act as his representative in the Medicaid application process. On September 12, 2019, Ita Gutman, on

behalf of Petitioner, filed a Medicaid application with the UCBSS. On November 20, 2019, AristaCare filed a verified complaint in support of a temporary guardianship citing two nearly identical physician's certifications dated November 7 and November 11, 2019.¹ On November 22, 2019, the Honorable Katherin DuPuis signed an Order of Temporary Guardianship (Order) which set a hearing date of January 17, 2020 to determine the issue of incapacity. The Order appointed Ben Menasha, Esquire, as Temporary Guardian of the Petitioner's estate.² The Order did not prohibit or limit the Petitioner's access to his own finances and permitted him to obtain counsel other than that appointed in the Order.

Petitioner's representative relies on the scant documentation provided with the verified complaint to support the contention that Petitioner lacked the capacity to access his accounts and, as a result, his funds were unavailable to him. The ALJ agreed and found that "AristaCare conclusively proved that no competent party known to them had access to Petitioner's financials, until full guardianship was obtained on February 28, 2020." This conclusion is unsupported by the record.

It is well established that "[t]he law presumes every person sane and casts the burden of establishing insanity on the one asserting it." State v. Hill, 47 A. 814 N.J.Err. & App., 1901. See also Turner v. Cole, 173 A. 613, 616 (N.J.Ch. 1934), "The proposition [is] that [the] normal state of mind of every person is presumed sane until the contrary is shown, Meeker v. Boylan, 28 N. J. Law, 274, and that the burden of proving insanity is on the defendants, who allege it, Trumbull v. Gibbons, 22 N. J. Law, 117, 51 Am. Dec. 253; Whitenack v. Stryker & Voorhies, 2 N. J. Eq. 8-11; In re De Remer's Will, 41 N. J. Law J. 344." Proof of mental incompetency must be from a physician who has personally examined the alleged incompetent, rendered a diagnosis and made a prognosis that the individual is unfit and unable to govern himself or herself and unable to manage his or her affairs. See N.J. Court Rules, (Gann) R. 4:86-2. Temporary guardianship does not have the effect of an adjudication

¹ Petitioner's attorney did not include a copy of the complaint, only a certification of Chaim Levin identified as "CFO of the Plaintiff."

² The Order did not give Ben Menasha the authority to appoint a DAR on behalf of the Petitioner or spend down funds.

of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order. See N.J. Rev. Stat. §3B:12-24.1c.(6). I FIND that the November 19, 2019 effective date of eligibility is arbitrary as there is nothing in the record to suggest that Petitioner's access to his finances was limited by the temporary guardianship.

Moreover, the Order sets forth a January 17, 2020 hearing date for incompetency proceedings. However, there is no evidence in the record that Petitioner's mental capacity was subject to any incompetency proceedings.³ Petitioner's representative provided no additional documentation, court filings or orders to support their assertion that Petitioner was legally incapacitated.⁴ Nearly a year and a half after the January 2020 capacity hearing was to have occurred; Petitioner's representative is unable to provide evidence that he was adjudicated incapacitated. On the contrary, nearly nine months after the scheduled capacity hearing, Ita Gutman provided another DAR whereby Petitioner himself appointed her to act as his representative.⁵ AristaCare cannot have it both ways. It cannot argue that Petitioner was incompetent during the Medicaid application process but was sufficiently competent to sign two DARs appointing a staff member to assist him, one before and one after it argued Petitioner's incompetency.

Furthermore, the issue of an applicant's mental state and the availability of his resources has been addressed by the Third Circuit Court of Appeals. 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"

³ Orders for temporary guardianships expire after 45 days unless the court extends the period for good cause shown. N.J. Rev. Stat. §3B:12-24.1c.(8).

⁴ Contrary to the ALJs findings, Petitioner provided no court order establishing full guardianship on February 28, 2020.

⁵ The DAR is dated September 18, 2020 (P-1)

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.

In I.L. v. DMAHS, 389 N.J. Super. 354 (2006), the applicant’s resources were deemed to be not available to her due to dementia that necessitated the appointment of a guardian. Those resources were only unavailable during the pendency of the guardianship. There is no guardianship action here. The evidence in the record indicates that Petitioner was never deemed a legally incapacitated person, and no permanent guardianship was ordered. Rather, the Petitioner was at all times competent and able to access his resources, as is evidenced by the fact that he was able to spend down his resources by April 2020 with no guardianship in place.⁶ Therefore, I FIND that the September 12, 2019 effective date, and three month retroactive period, set forth in the Initial Decision is also arbitrary as there is nothing in the record, other than AristaCare’s assertion, to suggest that Petitioner was incompetent at any point during the Medicaid application process.

Petitioner does not dispute that his resources exceeded the \$2,000 limit for each month beginning with the month of application through March 2020. There is no evidence in the record that these funds were unavailable to Petitioner prior to April 2020, when UCBSS determined that he finally met resource eligibility. However, there is nothing in the record to support an April 2020 eligibility date. The bank records provided by Petitioner do not include March or April 2020. Furthermore, AristaCare’s bank debit authorization form, which authorized a singular debit of \$4,008.00 signed by Ben Menasha on March 12, 2020, is not evidence of a debit or a bank balance below the \$2,000 limit. (P-9) There is no court order in

⁶ I note that regardless of an individual’s capacity, the DAR form, which is not a Power-of-Attorney, does not authorize the named representative to spend down the Medicaid applicant’s funds.

the record authorizing Menasha to act on Petitioner's behalf in this way. Without documentary evidence to verify Petitioner's resources, the April 2020 effective date is in question. The eligibility procedure is clearly set forth in the regulations and there is simply no provision which permits a relaxation of the eligibility date so long as the countable resources exceed the maximum limit.

THEREFORE, it is on this 10th day of SEPTEMBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED as there is no evidence in the record that Petitioner met resource eligibility at any time prior to April 2020; and

That the matter is REMANDED for additional evidence and testimony from Ben Menasha regarding his authority to act on Petitioner's behalf, including his authority to authorize debits from Petitioner's personal bank account to AristaCare or any other person or entity which caused Petitioner to meet resource eligibility in April 2020; and

That the matter is REMANDED for additional evidence and testimony from Ita Gutman regarding her authority to act on Petitioner's behalf, including how, by whom and for what purpose she was appointed in August 2019, February 2020 and September 2020;

That the matter is REMANDED for documentary evidence of Petitioner's resources as of April 2020.



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