



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Acting Commissioner

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Assistant Commissioner

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

M.C.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	ORDER OF RETURN
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 10158-20
	:	
AND HEALTH SERVICES AND	:	
	:	
BERGEN COUNTY BOARD	:	
	:	
OF SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 13, 2021, in accordance with an Order of Extension.

The matter arises regarding the recovery of \$32,411.89 based on incorrectly paid benefits for Petitioner. Petitioner began receiving Medicaid in January 2016. ID at 2. Petitioner's son, on her behalf, reported no income or assets on Petitioner's application and subsequent redeterminations. See R-2, R-3, R-4, R-5, and R-6. During Petitioner's March

2020 redetermination, the Bergen County Board of Social Services (BCBSS) discovered, through an asset verification search, that Petitioner had access to an unreported TD Bank account that Petitioner held jointly with her daughter-in-law, N.T. R-7. The BCBSS determined that between November 1, 2017 and March 31, 2020, the balances in the unreported bank account far exceeded the eligibility resource limit of \$2,000. ID at 2 and R-9. 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 TD Bank account found by BCBSS. See N.J.A.C. 10:71-4.1(c). Petitioner's son confirmed that Petitioner's name was on the joint TD Bank account with N.T., and asserted that the money in the account was Petitioner's son's and N.T.'s money. ID at 3. Petitioner's son contended that Petitioner should not be deemed ineligible for Medicaid from November 1, 2017 through March 31, 2020 and that Petitioner has no income, besides Social Security, or resources to repay the amounts owed. Ibid.

Participation in the Medicaid program will be denied if the individual's resources exceed \$2,000 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). In the present matter, the Asset Verification System (AVS) used Petitioner's Social Security number and other identifiers to discover the account 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 \$2,000. Thus, Petitioner was not eligible for those months in which her resources exceeded \$2,000, 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 \$2,000 for every month at issue between March 1, 2017 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 charges for 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