



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. HMA 09868-25

AGENCY DKT. NO. N/A

**M.S.<sup>1</sup>,**

Petitioner,

v.

**OCEAN COUNTY BOARD OF**

**SOCIAL SERVICES,**

Respondent.

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**Bryan Adler**, Esq., for petitioner M.S. (Rothkoff Law Group, attorneys)

**Kaila Reilly**, Human Services Specialist 3, for respondent Ocean County Board of  
Social Services pursuant to N.J.A.C. 1:1-5.4(a)(3)

Record Closed: October 8, 2025

Decided: October 28, 2025

**BEFORE TRICIA M. CALIGUIRE, ALJ:**

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<sup>1</sup> M.S. died on January 10, 2025. His widow, M.K.S., held his power of attorney and authorized counsel to handle this appeal.

### **STATEMENT OF THE CASE**

Petitioner M.S. appeals the decision of respondent Ocean County Board of Social Services (OCBSS) denying his eligibility for Medicaid benefits on the grounds that his resources exceed the limit of \$2,829, under N.J.A.C. 10:71-4.1.

### **PROCEDURAL HISTORY**

On March 4, 2025, respondent issued a Notice of Medicaid Eligibility to petitioner, denying his application. Through counsel, petitioner timely requested a fair hearing. The Division of Medical Assistance and Health Services transmitted this matter to the Office of Administrative Law (OAL), where it was filed on June 4, 2025, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On July 11, 2025, the parties appeared for the hearing by telephone with a call-in number. Petitioner, through counsel, requested an adjournment and the hearing was rescheduled. On August 26, 2025, the parties appeared for the hearing by Zoom, testimony was taken and documents admitted. On September 18, 2025, the parties participated in a telephone conference during which I asked respondent to supplement its hearing testimony in response to specific questions.<sup>2</sup> On September 29, 2025, respondent filed a brief to supplement the record; on October 8, 2025, petitioner filed his response, and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

Petitioner presented the testimony of two witnesses, M.K.S., petitioner's wife, and Paul Guerin, CPA. Respondent's case was presented by Kaila Reilly, Human Services Specialist 3. Based on the testimony and the documents introduced at the hearing, the supplemental brief submitted by Ivan Mendoza, Human Services Specialist 4, and petitioner's response, I **FIND** the following **FACTS**:

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<sup>2</sup> Cherise Dew, who handled petitioner's application for respondent, was not available for the rescheduled hearing.

In July 2024, petitioner moved from Pennsylvania to a nursing facility in Lakewood, New Jersey. R-15. On September 20, 2024,<sup>3</sup> and on November 30, 2024, petitioner applied to respondent for benefits under the New Jersey Family Care Aged, Blind, Disabled Medicaid Managed Long-Term Services and Supports program. R-1; R-3; R-16. At the time, he was married to M.K.S. R-16.

During their marriage, M.K.S. was the sole owner of a limited liability company which operates a day care center in Pennsylvania (the LLC). She continued to operate the day care at all relevant times, including after M.S.'s death. At all relevant times, M.K.S. received a salary and took distributions from the corporation which were taxed as income.

As of July 1, 2024, the combined resources of M.S. and M.K.S. included thirteen accounts, including four personal checking accounts, two personal savings accounts, an IRA, two annuities, a personal needs allowance, and three business accounts. R-4. Respondent considered the value of the accounts when determining available resources, notwithstanding the titles assigned to the accounts, and determined that the combined spousal resources in July 2024, were \$639,910.58, which exceeds the maximum allowable resource total of \$154,140, for M.K.S. and \$2,000, for M.S. R-4; R-5.

M.K.S. claimed that the business accounts, which held the majority of the money, were maintained solely for the purpose of the LLC, which was essential for her self-support, R-6, and should therefore be excluded from amounts available to M.S. as "non-home property used in a business." N.J.A.C. 10:71-4.4(b)(5).

Guerin has worked for M.K.S. for more than ten years; his services included filing income taxes on behalf of the LLC. Guerin stated that at the end of each year, a portion of the money earned by the LLC remained in its bank accounts to cover ongoing expenses. From year to year, money left in the accounts was income to M.K.S. She also

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<sup>3</sup> Petitioner's first application was denied on November 21, 2024, for failure to provide requested information, pursuant to 42 C.F.R. 435.952(c)(2). R-3.

took a salary and distributions as income. Guerin stated, however, that there was no commingling by M.K.S. of money from her business and personal accounts.

Respondent noted that M.K.S. took large distributions from the LLC accounts in 2022, and 2023, as shown on the tax returns she filed for those years. When asked for the purpose of those distributions, M.K.S. answered that “part of it was taxes that were due on the business because of income.”

Petitioner submitted copies of the federal tax returns filed by the LLC in 2022, and 2023. P-1. On the 2022 tax return, Line 12 under “Deductions” shows \$54,748, for “Taxes and Licenses.” P-1 at 1. Line 25, the amount owed under “Tax and Payments,” is blank, therefore, no additional tax was due. On page 3 of the tax return, Line 16d, “Distributions” are \$31,790, less than the amount owed in taxes. P-1 at 3.

On the 2023 tax return, Line 12 under “Deductions” shows \$72,449, for “Taxes and Licenses.” P-1 at 12. Line 25, the amount owed under “Tax and Payments,” is blank, again, no additional tax was due. On page 3 of the tax return, Line 16d, “Distributions” are \$100,706, approximately \$26,000 more than the amount owed in taxes. P-1 at 14.

Petitioner submitted copies of canceled checks from the various accounts owned by M.S. and M.K.S. and by the LLC, but without explanation of how or why transfers between accounts were made. Further, petitioner failed to explain the purpose of any spending from any account. Respondent stated that petitioner provided insufficient evidence that the funds in the business accounts were used exclusively for business operations and therefore, concluded that all funds were resources available to M.S.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Individuals are not eligible for institutional health services through the Medicaid program, if their available income or resources exceed the limitations set forth under the law. A “resource” is

any real or personal property which is owned by the applicant (or by those persons whose resources are deemed available to him or her, as described in N.J.A.C. 10:71-4.6) and which could be converted to cash to be used for his or her support and maintenance. Both liquid and nonliquid resources shall be considered in the determination of eligibility, unless such resources are specifically excluded under the provisions of N.J.A.C. 10:71-4.4(b).

[N.J.A.C. 10:71-4.1(b).]

Because petitioner was married to M.K.S. when he was institutionalized, respondent was directed by the regulations to consider "the total amount of the husband's and wife's combined countable resources," except as provided in N.J.A.C. 10:71-4.8. N.J.A.C. 10:71-4.6.

Respondent followed the directions in N.J.A.C. 10:71-4.8(a), as follows:

In the determination of resource eligibility for an individual requiring long-term care, the county social services agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989.

The total countable resources of the couple shall include all resources owned by either member of the couple individually or together.

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989[.] . . . The community spouse's share of the couple's resources shall be the greater of:

- a. [\$ 154,210]; or
- b. One half of the couple's combined countable resources.

Respondent (as stated above) determined that the combined spousal resources as of July 1, 2024, were \$639,910, well in excess of the maximum amount of \$154,150, for M.K.S. and \$2,000, for M.S. Petitioner, however, contends that the accounts belonging to the LLC should have been excluded from consideration under N.J.A.C. 10:71-4.4(b)(5), which provides:

Nonhome property that is used in a business or nonbusiness self-support activity that is essential to the means of self-support of an individual and/or spouse, is excluded from resources.

i. Tools, equipment or other items that are used for trade or business and required for employment, including, but not limited to, the machinery and livestock of a farmer, are assumed to be of a reasonable value and producing a reasonable rate of return and are, therefore, excluded from resources.

As respondent concedes, "liquid assets like a business checking account can be excluded from benefit eligibility" if the petitioner – who bears the burden of proof – can prove that those assets were used solely for the operation of the business. Suppl. Letter of Resp't (Sept. 29, 2025) (Resp't's Suppl. Ltr.), at 3.

Petitioner contends that the property of the LLC, including all liquid resources, are so "essential" to M.K.S.'s means of self-support that the business accounts must be excluded from consideration by respondent. Pet'r's Response to Resp't's Letter Br. (October 8, 2025) (Pet'r's Response), at 2. But, the Social Security publication cited by petitioner in support of her position states that "liquid resources are not considered property essential to self-support except when used as part of a trade or business." Pet'r's Response, Ex. C-1 (Soc. Sec. Program Operations Manual System, SI 01130.500), at 2.

As petitioner notes, neither party “provided the granular factual detail” requested regarding the thirteen separate accounts held by M.S. and M.K.S. as a couple and by the LLC. Pet’r’s Response at 5. Instead, “both parties focused on the threshold legal question of whether business bank accounts can ever be excluded from consideration” as a resource available to the Medicaid applicant. Ibid. Here, petitioner is only partly correct. I did expect respondent to explain the basis for its conclusion that distributions from the LLC were used by M.K.S. for other than business purposes. But, respondent clearly – and correctly -- states that the burden is on petitioner to prove that the distributions were used only for business purposes. Resp’t’s Suppl. Ltr. at 3.

Petitioner contends that testimonial and documentary evidence is sufficient to show that the LLC “is a bona fide business run appropriately.” Pet’r’s Response at 1. The issue, however, is not whether the LLC operated in violation of law – there was no such allegation. Nor did respondent allege that M.K.S. acted inappropriately by taking distributions from the LLC. The issue was whether in taking such distributions, M.K.S. used money from the business accounts – aside from her salary – for personal reasons. If she had shown that all liquid assets of the business were put back into the business, the result would be different. At the hearing, M.K.S. offered only that large distributions were taken in part “to pay taxes,” which, on its own without explanation, accounts only for the distribution taken in 2022.<sup>4</sup> Without more, I **CONCLUDE** that petitioner did not carry the burden of proving by the preponderance of credible evidence that the business accounts should not have been considered in the calculation of resources available to M.S. I **CONCLUDE** that petitioner did not prove that he was eligible for Medicaid benefits.

### **ORDER**

I hereby **ORDER** that the decision of respondent **Ocean County Board of Social Services** to deny the application of petitioner **M.S.** for Medicaid benefits is **AFFIRMED**, and the appeal of petitioner is **DISMISSED**.

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<sup>4</sup> I note that counsel objected to the question on the grounds that the issue was not M.K.S.’s use of the money but the proper characterization of the funds which were distributed to her. Counsel’s objection was overruled.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

October 28, 2025

DATE



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TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

TMC/kl

**APPENDIX**

**WITNESSES**

**For Petitioner:**

M.K.S.

Paul G. Guerin, CPA

**For Respondent:**

Keila Reilly, HSS 3

**EXHIBITS**

**For Petitioner:**

- P-1 2022 and 2023 U.S. Income Tax/S Corp Returns for Day Care Center
- P-2 Resource Assessment Balances and Account Totals for August 1, 2024, and September 1, 2024
- P-3 Curriculum Vitae of Paul G. Guerin, Certified Public Accountant
- P-4 Petitioner's Response Brief with Exhibits A-1 through G-1, dated October 8, 2025

**For Respondent:**

- R-1 Medicare Application dated November 30, 2024
- R-2 Designation of Authorized Representative Form and Power of Attorney
- R-3 Caseworker Summary
- R-4 OCBSS Resource Assessment, dated February 27, 2025
- R-5 Medicaid Eligibility Worksheet
- R-6 Emails between Caseworker C. Dew and DAR explaining resource assessment
- R-7 Medicaid Communication No. 25-01
- R-8 Notice of adverse action, dated March 4, 2025

- R-9 State of New Jersey, Verification of Death of M.S.
- R-10 M.S. Last Will and Testament and updated DAR Form
- R-11 NJ Regulations
- R-12 Caseworker's Worksheet of Accounts
- R-13 Accounts Listed on Medicaid Eligibility Worksheet, dated March 4, 2025
- R-14 Checking Account Statement (reference to R-12)
- R-15 Leisure Chateau Ledger
- R-16 Medicaid Application, dated September 20, 2024
- R-17 Citizen's Account Statement No. XXX9533
- R-18 Check Payments, deeds, tax bills for 322 39<sup>th</sup> St., East and West