

Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein by reference. This matter concerns the effective date of Petitioner's Medicaid eligibility. The County determined that Petitioner was eligible as of June 1, 2013. Petitioner argues that eligibility should be effective February 1, 2013 because the accumulation of funds in her bank account was due to the fact that Petitioner's POAs failed to access the funds and use the money to pay the nursing home for her care. As a result, Petitioner contends that the funds in her bank account were inaccessible in accordance with N.J.A.C. 10:71-4.4(b)(6) which "excludes resources that are not accessible to an individual through no fault of his or her own." I disagree.

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). Put simply, the inaccessibility rule is inapplicable to situations such as this because there was no legal impediment to Petitioner's resources. Here, as noted by the ALJ, Petitioner unquestionably has the legal authority to access her resources through her

POAs. Moreover, there is also no indication that Petitioner lacks the mental or physical capacity to access the account herself. Not only was there no legal impediment to accessing her resources; on August 30, 2013, Petitioner's POA wrote a check to the nursing home from the account to complete the spend down process. Thus, the funds were clearly available as the POAs did in fact access them in order to complete the eligibility process.

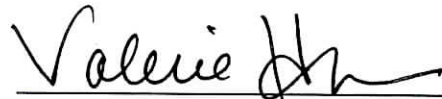
In Chalmers v. Shalala, 23 F. 3d 752 (1994), the Third Circuit found that even though the applicant's schizophrenic mental state precluded her from having actual power or physical ability to liquidate her property interest, the property was considered a resource for purposes of obtaining Supplemental 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" 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. See also, S.D. v. Div. of Med. Assistance & Health Servs., No. A-5911-10 (App. Div. February 22, 2013) (slip. op. at 14) <<http://njlaw.rutgers.edu/collections/courts/>> and L.S. v. Div. of Med. Assistance & Health Servs., No. A-0571-04 (App. Div. October 21, 2005) (slip. op. at 32) <<http://njlaw.rutgers.edu/collections/courts/>>.

Here, the facts clearly support the finding that Petitioner had access to her funds as her POA wrote a check to the nursing home on August 30, 2013 to establish Medicaid eligibility.

THEREFORE, it is on this 2nd day of September 2014

ORDERED:

That the Initial Decision affirming the June 1, 2013 Medicaid eligibility date is hereby ADOPTED.

A handwritten signature in black ink, appearing to read "Valerie Harr", is written over a horizontal line.

Valerie J. Harr, Director
Division of Medical Assistance
and Health Services