

**ASSISTANT COMMISSIONER'S OFFICE**  
**APPROVAL ROUTING FORM**

**PREPARED BY:** Carol Jones  
**Phone #:** 689-0502

**ATTACHMENT OR ITEM**  
**DESCRIPTION:**

**APPROVED BY:**

**INITIALS/DATE**

**CHIEF OF STAFF**

    *cg* 7/15/16.    

**ASSISTANT DIVISION DIRECTOR**

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**APPROPRIATE PROGRAM STAFF**

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**OTHER REQUIRED APPROVALS:**

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**COMMENTS:**

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**In the Matter of**

**J.S.**

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**FINAL AGENCY DECISION**

Petitioner, J.S., through his mother and legal guardian, appeals the amount that the Division of Developmental Disabilities' (Division) requires him to contribute to the cost of his care pursuant to N.J.A.C. 10:46D.

The following items were reviewed in preparing this Final Agency Decision: 1) Petitioner's request for review of the monthly Contribution to Care assessment dated August 2, 2015; 2) Informal Conference Report dated October 22, 2015; 3) Petitioner's Request for Administrative Review dated February 1, 2016; 4) Petitioner's written arguments for review dated April 14, 2016; 5) Recommended Decision dated April 22, 2016; 6) Division file for J.S.; and 7) applicable statutes, regulations, codes and case law cited throughout this Final Agency Decision.

**BACKGROUND**

Petitioner was born on March 3, 1988 and is eligible for Division services. He resides at a group home funded by the Division, and is therefore required to contribute to the cost of his care and maintenance pursuant to statute and regulation. Petitioner's mother is his guardian and representative payee for Social Security benefits. He receives a Social Security benefit of approximately \$835 monthly. Using the applicable regulatory formula, the Division determined his contribution to care amount to be \$632.29 per month. Petitioner has failed to consistently pay the contribution to care and has an outstanding balance of over \$17,000.

Petitioner seeks to retain additional funds beyond the \$40 personal needs allowance. In particular, he seeks to retain \$350-\$400 monthly to pay for taxis and private transportation his mother uses to visit and take him on outings from the group home several times per week, \$50-\$70 per month on restaurant costs, and \$150-\$200 per month on clothing.

Petitioner requested an appeal of the contribution to care assessment on August 2, 2015. An informal conference was held on October 22, 2015. A settlement was not reached, and on January 13, 2016, the Division issued an informal conference report finding the contribution to care assessment proper. Petitioner continued the appeal by letter dated February 1, 2016. The Division issued a Recommended Decision on April 22, 2016, also finding the contribution to care assessment to be proper. Petitioner did not submit exceptions to the Recommended Decision. I now issue this Final Agency Decision.

## **DISCUSSION**

Since 2012, Petitioner has resided in a group home funded by the Division. Individuals residing in placements funded by the Division are required to contribute to the cost of providing for their care. As such, the Division must assess an individual's ability to contribute to his or her care according to a formula set by regulation. N.J.A.C. 10:46D-2.2(d).

The formula takes the individual's Total Monthly Net Income and subtracts the personal needs allowance to derive the individual's Disposable Monthly Income. N.J.A.C.10:46D - 3.1(a). Seventy-five percent of the Disposable Monthly Income must then be contributed to the cost of care and maintenance. *Id.* at 3.1(b).

Petitioner essentially seeks to retain more than the remaining twenty-five percent of his disposable income. However, individuals may retain more than twenty-five percent of income only in specific circumstances set forth in regulation as follows:

1. The individual's reasonable costs related to food or shelter, including heat and utilities in a supervised apartment that exceed the amount provided in the agency contract;
  2. Major "unavoidable" medical costs that are covered by Medicaid but exceed the frequency of service established by Medicaid or other unavoidable medical costs as reviewed and approved by the Division;
  3. Replacement of personal items due to destructive behavior based upon documentation in a specific behavior plan and not covered by the contract or third party;
  4. For individuals who do not already have one, establishment of an irrevocable burial fund. The individual shall be permitted to retain no more than an additional ten percent per month of the Disposable Income until such time as the burial contract is paid in full; and
  5. For individuals who will move from a residential placement to independent living within six months, the individual may retain up to \$2,000 to establish his or her household. Once the individual lives independently, he or she will have all his or her funds available; no contribution is required. The \$2,000 must be spent, as it is needed; the individual cannot accumulate these funds.
- N.J.A.C.10:46D - 3.1(g).

These expenses are commonly referred to as "special circumstances." If Petitioner spends funds on any special circumstances listed above, he may seek to reduce his contribution to care assessment, as indicated by the Regional Administrative Practice Officer during the informal conference.

Petitioner seeks to retain funds that his mother spends on entertainment outings, transportation, and clothing. Entertainment outings, transportation and clothing are absent from the express exceptions in N.J.A.C. 10:46D-3.1(g). Under the regulatory

formula applicable to Division clients required to pay contribution to care, Petitioner must pay for these items from either his personal needs allowance or the twenty-five percent (25%) retained income. Otherwise, if the Petitioner has applicable expenses he is encouraged to submit a special circumstances request to:

Consumer Financial Services Unit  
New Jersey Division of Developmental Disabilities  
221 Laurel Rd, Voorhees Township, NJ 08043

### CONCLUSION

For the foregoing reasons, I hereby find the Division's denial of the Petitioner's request to modify his contribution to care assessment to be proper.

This is my Final Decision.

Dated: 7/18/16

  
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Elizabeth M. Shea  
Assistant Commissioner  
Division of Developmental Disabilities