

redetermination application. During the 2020 redetermination, Bergen County Board of Social Services (BCBSS) discovered an undisclosed bank account that listed both Petitioner and her son as owners. A review of the account showed that Petitioner has in excess of \$4,000, the New Jersey Care Medicaid resource eligibility limit, sporadically from May 2014 through January 2020. As a result, the BCBSS determined that Petitioner was no longer eligible for Medicaid benefits.

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). As noted by the ALJ, there is no dispute that Petitioner had access to the undisclosed bank account, which she co-owned with her son. That account was never listed on the redeterminations and the amount in that account put Petitioner over the Medicaid resource eligibility limit of \$4,000. Consequently, Petitioner was not eligible for those months in which her resources exceeded \$4,000 and the recovery of the overpayment is appropriate.¹

However, with regard to the termination of benefits, this matter is reversed. Administrative agencies have the discretion to determine whether a case is contested. N.J.S.A. 52:14f-7(a). The OAL acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2(a). A contested

¹ Due to the time period during which the Petitioner was ineligible, the recovery of overpayment is not prohibited by the current maintenance of effort. However, the Families First Coronavirus Response Act signed into law on March 18, 2020 bars all Medicaid terminations during the course of the public health emergency caused by COVID-19. All individuals enrolled in Medicaid as of March 2020 will have continued benefits, until the last day of the month when this public health emergency is officially ended. As noted in the Initial Decision, Petitioner's Medicaid benefits have been continued during the pendency of the hearing and will continue pursuant to the Families First Coronavirus Response Act.

case is commenced in the State agency with appropriate subject matter jurisdiction. N.J.A.C. 1:1-3.1. DMAHS is the administrative agency within the Department of Human Services (DHS) that is charged with administering the Medicaid program. N.J.S.A. 30:4D-4. On July 1, 2020, this office transmitted Petitioner's appeal of BCBSS' May 18, 2020 notice of overpayment. Petitioner's request for fair hearing with regard to termination of eligibility was transmitted in February 2020 as a separate matter. The two were not consolidated by the OAL. As a result, the only matter before the court is the issue of Medicaid overpayment.

THEREFORE, it is on this 23rd day of FEBRUARY 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the Medicaid overpayment; and

That the Initial Decision is REVERSED with regard to the termination of Medicaid eligibility.



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