



N.J.A.C. 10:71-4.5(c) states that participation in the Medicaid Only program will be denied if the resources of an individual exceed \$2,000. Resource eligibility is determined as of the first moment of the first day of the month. 20 C.F.R. § 416.1207(a) and N.J.A.C. 10:71-4.1(e). Additionally, any resource that is not specifically excluded by regulation “shall be considered a countable resource for the purpose of determining Medicaid Only eligibility.” N.J.A.C. 10:71-4.2(a).

An application was filed on Petitioner’s behalf by the Office of the Public Guardian (OPG) with the Atlantic County Department of Family and Community Development. (Atlantic County) on June 29, 2016. R-1 at 127-134. While the application listed some information relative to Petitioner including a First National Bank of Ohio bank account, most of the information requested on the application was unknown. ID at 3. On December 1, 2016, Atlantic County requested verification of certain information in order to process Petitioner’s application, including proof of where Petitioner’s Social Security payments were being deposited and statements for all bank accounts that she held. Ibid. OPG determined that Petitioner’s Social Security payments were being directly deposited into a First National Bank of Pennsylvania<sup>1</sup> (First National Bank) bank account and attempted to subpoena the bank statements. Id. at 4. The bank, however, would not accept the subpoena, as the bank does not do business in New Jersey and a new subpoena in a state where the bank operates needed to be issued. Ibid. By email dated July 5, 2017, Atlantic County advised OPG of the existence of another bank account with JP Morgan Chase Bank (Chase Bank) and requested statements for that account as well. Ibid. OPG, in an email on April 7, 2017, referenced documents regarding a New York pension held by Petitioner. J-4.

Atlantic County transferred the application to Cumberland County Board of Social Services (CCBSS) on July 26, 2018. Id. at 2. On September 13, 2018, CCBSS requested

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<sup>1</sup> It appears that the disclosed bank account with First National Bank of Ohio is the same bank account as the First National Bank of Pennsylvania.

verifications of additional information including Petitioner's 2017 and 2018 gross pension amount, accounts statements from the First National Bank account, the Chase Bank account, the OPG Trial balance account, and Petitioner's Personal Needs Allowance (PNA) account balances from admittance to present. J-5. The letter additionally advised that the Chase bank account contained \$15,569.85 as of August 1, 2018 and would need to be spent down "asap." Ibid. The letter further requested that verification of the spenddown with "paper trail of where funds were spent along with closeout statement" be provided. Ibid.

On November 17, 2018, CCBSS issued another verification request, advising that the previously requested gross pension amounts, account statements from the First National Bank account, Chase Bank account, and OPG trial balance account were still needed. J-6. By letters dated February 27, 2019, August 15, 2019, and October 23, 2019, CCBSS issued additional notices, advising that Petitioner's pension amount and account statements from the First National Bank and Chase Bank accounts were needed. J-7, J-8, and J-9. Each of these notices advised that the balance in the Chase Bank account needed to be spent down "asap."

On October 23, 2019, CCBSS requested verification of Petitioner's gross pension amount and Chase Bank statements. J-9. In addition to again advising that the Chase Bank account needed to be spent down, the letter advised that the balance in the First National Bank account as of August 5, 2019 was \$11,476.32 and also needed to be spent down with a paper trail provided. Ibid. On November 11, 2019, CCBSS issued another letter requesting documentation and advising that both the First National Bank and Chase Bank accounts needed to be spent down as the First National Bank account balance as of August 5, 2019 was \$11,476.32 and Chase Bank account balance as of September 10, 2019 was \$21,680.44. J-10. On or about November 14, 2019, OPG received a cashier's check in the amount of \$22,348.78 from the Chase Bank account. P-1. Sometime in 2019, with the help of the Law Office of Cowart Dizzia, LLP, on behalf of Petitioner's nursing facility, OPG

discovered that the First National Bank account was a joint account that was owned by Petitioner with her nephew, who passed away in 2015. ID at 6.

After sending an additional notice on January 24, 2020, the agency issued its final notice on February 14, 2020, requesting Petitioner's gross pension amounts for 2017, 2018, and 2019 and statements from the First National Bank account with spenddown paper trail. J-11 and J-12. While her application was still pending in 2020, Petitioner passed away, which terminated OPG's guardianship of Petitioner. Id. at 2. On November 9, 2020, CCBSS notified OPG that it was dismissing Petitioner's pending application. J-13.

On April 28, 2021, after being notified that an administrator of Petitioner's estate had been appointed, CCBSS rescinded its dismissal of the application to allow the administrator and newly-appointed Designated Authorized Representative, Jannell Thomas, an employee of Petitioner's former nursing facility, additional time to complete the June 29, 2016 application. Ibid. By letter dated April 28, 2021, CCBSS sent a verification letter to the Petitioner's estate administrator, advising that gross pension verification for 2018 and 2019, First National Bank statements, and OPG Trial Report showing balances needed to be provided within thirty days. J-24. The administrator of Petitioner's estate was able to access the funds in the First National Bank account, and on February 23, 2021, she received a bank check in the amount of \$11,298.09. J-25. On May 21, 2021, the administrator opened an Estate Account, deposited the bank check into the account, and paid Petitioner's nursing facility \$9,500. ID at 7 and J-27.

On June 7, 2021, CCBSS issued another verification letter to the administrator of Petitioner's estate, requesting additional Chase Bank statements and Petitioner's PNA account balances from October 1, 2018 through March 1, 2020. J-26. The letter advised that the Asset Verification System (AVS) used by CCBSS reported that the Chase Bank account contained monthly account balances over \$2,000. Ibid.

On July 1, 2021, the DAR's representative submitted proof of spenddown from the

Estate account and the Chase Bank account statements. J-30. The representative requested additional time to complete the spenddown. Ibid.

By letter dated July 27, 2021, CCBSS denied Petitioner's application, advising that Petitioner's "combined resources from date of the application through her death & retroactive months of March 2016 through May 2016 exceeded the Nursing Home Medicaid resource limit of \$2,000." R-1 at 2. CCBSS included a spreadsheet showing a resource breakdown that showed combined excess monthly resources March 1, 2016 through March 1, 2020. R-1 at 7-9. CCBSS excluded all income from the First National Bank account, as being inaccessible; however, funds from the Chase Bank account, Petitioner's PNA, and OPG Trial account were included. Ibid.

On July 28, 2021, the administrator of Petitioner's estate sent a letter to Chase Bank in order to liquidate the account. J-32. Chase Bank issued a cashier's check, dated September 1, 2021, in the amount of \$1,324.87 to the Estate. J-33. Spenddown was completed by September 14, 2021. J-34.

The Initial Decision upholds the denial of Petitioner's application, and I concur. The \$2,000 limit is a bright line test as of the first moment of the first day of the month. N.J.A.C. 10:71-4.5. While Petitioner argued both at the hearing in this matter and in her exceptions to the Initial Decision that the funds in the accounts were unavailable to her due to her incapacity, Petitioner was under the guardianship of OPG from the date the application was filed in June 2016 until her death in 2020. To that end, the Initial Decision is correct that this matter is factually and legally distinguishable from I.L. v. Div. of Med. Assistance & Health Servs., 389 N.J. Super. 354 (App. Div. 2006), as the individual in that matter had neither a guardian nor power of attorney to access the life insurance policies that prevented eligibility. Id. at 365. Here, Petitioner had a guardian in place during entire application process prior to her death and that guardian was aware of and had access to the accounts and funds at issue. At the very latest, OPG was specifically made aware of the Chase Bank account through an

email from Atlantic County on July 5, 2017 and statements were requested.<sup>2</sup> J-4. After the application was transferred to CCBSS for processing, CCBSS issued a verification letter to OPG on September 13, 2018 that advised OPG that the balance in the Chase Bank account exceeded the \$2,000 resource limit and the funds needed to be spent down "asap." J-5. Thereafter, CCBSS issued several additional letters advising of the same information. However, there is nothing in the record to show what was done by OPG from the date that the account was identified in 2017 until OPG obtained a cashier's check for \$22,446.78 from that account in November 2019.

Petitioner's arguments in her exceptions that OPG thought the Chase Bank account was closed when the cashier's check was issued is additionally unfounded. There is no evidence in the record to show that OPG intended to close the account. Specifically, a balance of \$100 remained in the account after the cashier's check was issued, as shown on the bank statements, which continued to be addressed to OPG. See R-1. Moreover, Petitioner's pension payments, a known asset, were continuing to be deposited in the Chase Bank account and was the source of the increasing balances after the cashier's check was issued. Ibid. OPG did not divert the pension payments into another bank account and no closing documents were provided showing that the account was closed prior to September 2021. It was not until after Petitioner's death and an estate administrator appointed that the death certificate from Petitioner's late husband was sought and the account was finally liquidated and closed. Although OPG, as Petitioner's guardian, was aware of the existence of the account from at least 2017 and maintained the authority to access and close the

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<sup>2</sup> Moreover, as noted by the ALJ, Petitioner's Chase Bank account statements were addressed to Petitioner at her prior residence prior to the May 9, 2016 through June 8, 2016 statement, when someone with the authority to change Petitioner's address updated the address on the Chase Bank account to Petitioner's nursing facility's address. R-1. The statements continued to be addressed to Petitioner at her nursing facility until the statement beginning October 9, 2019 through March 9, 2020, when the address was once again changed to OPG's address. Ibid.

account prior to Petitioner's death, the account was left open. As a result, balance contained in that account alone exceeded the resource limit for Petitioner to qualify for benefits from March 2016 through December 2019 and in March 2020. R-1 at 7-9.

Additionally, aside from the funds contained in the Chase Bank account, the combined balances of Petitioner's PNA and OPG Trial accounts exceed the \$2,000 resource limit for March 2017 and April 2019 through March 2020. See R-1 at 6-9. Petitioner's PNA account alone exceeded the resource limit from January 2020 through March 2020. Ibid. These resources were directly under the control of both OPG and Petitioner's nursing facility. However, the amounts contained in these accounts alone excluded Petitioner's eligibility for those months.

I further note that Petitioner's arguments in her exceptions that the ALJ "arbitrarily set a deadline for spenddown that was unreasonable in the light of the long pendency of the application" is additionally unfounded. OPG was provided ample extensions to spenddown Petitioner's accounts prior to Petitioner's death. Moreover, the estate administrator was appointed on December 11, 2020. J-21. However, no request to liquidate, close, and spenddown the Chase Bank account occurred until July 28, 2021, the day after CCBSS denied Petitioner's application. See J-30 and J-31. The Chase Bank account was then not liquidated and closed until September 1, 2021 and the spenddown was not completed until on or about September 14, 2021. J-33 and J-34. At that point, Petitioner was deceased for over one year. Regardless of when the spenddown took place after the estate administrator was appointed, Petitioner was still over the resource limit for every month that eligibility could be sought, which was between March 2016 and March 2020. Spending down Petitioner's accounts at any time after Petitioner's death does not change that aspect.

Petitioner's representatives are unable to point to even one month between March 2016 and March 2020 where Petitioner's combined resources were at or under the \$2,000 resource limit to qualify for benefits. Petitioner's representatives failed to timely spenddown

Petitioner's funds in accounts that were known and accessible to them as Petitioner's legal representatives, and, as a result, CCBSS appropriately determined that Petitioner was ineligible for Medicaid benefits as a result of her excess resources.

Thus, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT the Initial Decision in this matter.

THEREFORE, it is on this 18<sup>th</sup> day of MARCH 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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