



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 12394-23
AGENCY DKT. NO. N/A

K.B.,

Petitioner,

v.

**BURLINGTON COUNTY BOARD OF
SOCIAL SERVICES,**

Respondent.

Marianne Johnston, Esq., for petitioner (Begley Law Group, P.C., attorneys)

Anthony H. Ogozalek, Esq., for respondent (Law Office of Anthony H. Ogozalek,
attorneys)

Record Closed: May 30, 2024

Decided: June 18, 2024

BEFORE **NICOLE T. MINUTOLI, ALJ:**

STATEMENT OF THE CASE

Petitioner K.B.'s Medicaid benefits were terminated by respondent Burlington County Board of Social Services (BCBSS) effective October 31, 2023, because his resources exceeded the resource limit for eligibility. Should petitioner's retirement assets have been treated as a countable resource when considering his eligibility under the

Aged, Blind, and Disabled (ABD) program when petitioner did not have access to this resource? No. N.J.A.C. 10:71-4.4(b)(6) specifically excludes resources where the value of resources is not accessible to an individual through no fault of his or her own.

PROCEDURAL HISTORY

On October 10, 2023, the petitioner was notified by the BCBSS that his Medicaid benefits would be terminated effective October 31, 2023, for being over resourced. (R-1 at 12–13.) The petitioner timely requested a fair hearing, and the matter was transmitted to the Office of Administrative Law, where it was filed on November 13, 2023, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

After a telephonic prehearing conference on January 22, 2024, both parties appeared by telephone on May 30, 2024, gave testimony, and introduced exhibits, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are undisputed and, therefore, I **FIND**:

Petitioner is a forty-six-year-old single man who lives in a group home and has been receiving ABD benefits for approximately twenty-five years. (R-1 at 1–2.)

On February 10, 2005, the Superior Court of New Jersey, Chancery Division, Burlington County, Probate Part, entered an order finding petitioner incapacitated and unfit and unable to govern himself and manage his affairs with respect to personal, medical, and financial needs. (P-1 at 1–3.) On February 14, 2005, the court appointed petitioner's mother as his guardian. (P-2 at 1.)

On March 6, 2019, petitioner's mother passed away. (P-3 at 1.)

On August 11, 2023, the petitioner submitted his renewal application for ABD benefits. (R-1 at 1–8.) In reviewing the petitioner's August 11, 2023, renewal application,¹ the BCBSS determined that the cash value of a 401(a) retirement plan in petitioner's name was an available and countable resource with a value of \$50,591. (R-1 at 9.)

On October 10, 2023, the BCBSS terminated petitioner's ABD benefits effective October 31, 2023, for being over the maximum resource level for eligibility of \$4,000 under N.J.A.C. 10:72-4.5. (R-1 at 12–13.)

From March 6, 2019, through May 23, 2024, no guardian was appointed on behalf of petitioner.

On May 24, 2024, petitioner's sister, D.B., was appointed petitioner's guardian by the court. (P-4 at 1.)

LEGAL DISCUSSION

To be eligible for ABD Medicaid, an applicant's available income or resources must not exceed the limitations set forth under the law. Resources, for determination of ABD eligibility, are broadly defined as any resources "which could be converted to cash to be used for [an applicant's] support and maintenance." N.J.A.C. 10:71-4.1(b). Resources are available to an applicant when those resources are either under their "right, authority or power to liquidate" or where those resources have been "deemed available to the applicant." N.J.A.C. 10:71-4.1(c)(1) and (2). If a resource is not accessible to an applicant through no fault of his or her own, then the value of that resource is excluded. N.J.A.C. 10:71-4.4(b). The applicable resource eligibility standard under N.J.A.C. 10:72-4.5 for ABD benefits is \$4,000 for an individual.

¹ The renewal application was dated August 3, 2023, but received by the respondent on August 11, 2023.

The BCBSS was responsible for establishing the petitioner's resource eligibility as an applicant for ABD benefits. The ABD "resource criteria and eligibility standards apply to all applicants and beneficiaries." N.J.A.C. 10:71-4.1(a).²

This matter is analogous to I.L. v. New Jersey Department of Human Services, Division of Medical Assistance & Health Services, 389 N.J. Super. 354 (App. Div. 2006). I.L. was originally denied benefits on the ground that she owned insurance policies that were considered by the agency to be "countable resources" in excess of \$2,000. The consideration of the value of these policies as an available asset is what made her ineligible for the Medicaid Only program. I.L. argued, and the administrative law judge (ALJ) found, that the cash-surrender value of the life insurance policies was "not accessible [to her] through no fault of . . . her own" because she was not capable of handling her financial affairs at any relevant time and no guardian had yet been sought or appointed. Id. at 363. In reaching this conclusion, the ALJ relied on the statutory exclusion of N.J.A.C. 10:71-4.4(b)(6), which lists "[t]he value of resources which are not accessible to an individual through no fault of his or her own" as the basis for disregarding the value of the insurance policies in the eligibility determination. Id. at 364.

The Appellate Division agreed with the ALJ and indicated that I.L.'s circumstances required recognition that the cash values of her life insurance, while theoretically accessible to I.L. through an appointed guardian, were not in fact accessible until the guardian's appointment. Id. at 366.

Like the petitioner in I.L., petitioner K.B. filed his ABD benefits renewal application when he had no appointed guardian. Since petitioner was declared incapacitated in 2005, he clearly did not have access to his resources when no guardian had yet been appointed. Accordingly, I **CONCLUDE** that the petitioner did not have access to his 401(a) retirement plan through no fault of his own.³

² See also N.J.A.C. 10:72-4.5(b)(1), stating, "resource provisions of the Medicaid Only Manual apply in the determination of countable resources for aged, blind, or disabled individuals"

³ Petitioner also has a bank account that is not valued above the statutory resource limit of \$4,000 set forth in N.J.A.C. 10:72-4.5.

The BCBSS had the burden of proving by a preponderance of the credible evidence that its decision to terminate petitioner's ABD benefits was proper. I **CONCLUDE** that the BCBSS failed to meet its burden. I **CONCLUDE** that petitioner is not over resourced and that ABD benefits should be approved.

ORDER

It is hereby **ORDERED** that the determination of the BCBSS to terminate the petitioner's Aged, Blind and Disabled benefits is hereby **REVERSED**. Petitioner's appeal is **GRANTED**.

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.

June 18, 2024

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/lad

APPENDIX

WITNESSES

For petitioner

D.B.

For respondent

Edward Bittle, Paralegal Specialist

EXHIBITS

For petitioner

- P-1 Judgment Determining Incapacity and Appointment of Guardian, February 10, 2005
- P-2 Letters of Guardianship, February 14, 2005
- P-3 Certificate of Death, March 6, 2019
- P-4 Letters of Guardianship, May 24, 2024

For respondent

- R-1 Fair hearing packet