



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

D.P.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
UNION COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 14993-2014
On REMAND HMA 228-2013

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision/Dismissal, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is April 22, 2016 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on March 8, 2016.

This matter concerns the Medicaid application filed for Petitioner. The matter was originally transmitted to the Office of Administrative Law on July 25, 2013 to contest a notice dated January 16, 2013. In that notice Union County Board of Social Services denied Petitioner's application and noted that \$180,215 of her assets were unaccounted for and states that Petitioner is subject to a transfer penalty. The parties engaged in settlement discussions and, after an exchange of emails, on May 28, 2014 the parties agreed to eligibility as of January 15, 2013. However, two days later on May 30, 2014, counsel for Union County informed all parties that that date was unacceptable to his client. (HMA 2284-2013 ID at 25-26).

The Initial Decision found that Delaire Nursing Facility, who was permitted to intervene in the case, had relied on that date for two days and that this reliance was detrimental enough to require that date be enforced. The Final Agency Decision reversed the Initial Decision and rejected the Settlement Agreement as having no support in law to establish Petitioner's eligibility as of that date. As such the matter was remanded on November 5, 2014 for further proceedings.

However, on October 24, 2014, Petitioner passed away. By letter dated August 6, 2015, Petitioner's counsel stated that they were withdrawing the request for a fair hearing and had "no further authorization to proceed from her estate." Without citation or authority, counsel wrote "the matter will continue in the absence of the Medicaid applicant/beneficiary." This is legally incorrect and the case should have marked as withdrawn at this point.

Instead, the case proceeded between Delaire and Union County although continuing to be captioned under Petitioner's name. An Initial Decision was entered incorporating a consent order by reference and dismissing the matter. As Petitioner

withdrew the request for a fair hearing, there is no party with standing to proceed as Petitioner and, thus, no contested matter. For the reasons that follow, I hereby REJECT the Initial Decision and consent order and ORDER the case be marked withdrawn on August 6, 2015 pursuant to N.J.A.C.1:1-19.2.

When a party withdraws a request for a hearing, the matter is to be discontinued and the case file returned to the transmitting agency. N.J.A.C.1:1-19.2. Under Medicaid regulations only the "applicant for, or beneficiary of, Medicaid Only" benefits may request a Fair Hearing. N.J.A.C. 10:71-8.4. A provider of services, such as a nursing facility, does not have standing under this section.¹ Petitioner's revocation of the authority to proceed in this matter leaves the matter without a petitioner.

Federal regulations also limit appeals of eligibility determinations to the Medicaid recipient or applicant. See 42 C.F.R. § 431.200(a) (requiring "an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly.") (emphasis added). Although a Medicaid applicant may designate an authorized representative to pursue Medicaid benefits on her behalf, 42 C.F.R. § 435.923, there is no evidence that Delaire is acting in its capacity as her authorized representative in the present matter.

Indeed, Petitioner's attorney withdrew her fair hearing request by specifically stating that Petitioner's estate, which is the successor in interest, had revoked any authorization to proceed. Without authorization from the estate to continue the fair hearing or to execute a designation of authorized representative form in favor of Delaire,

¹ Under other regulations, providers are parties in Fair Hearings concerning rates, claims payments, or similar issues relating to their business operations as Medicaid providers. See N.J.A.C. 10:49-10.3. This matter is not based on any of those regulations.


there is no authority to permit Delaire to pursue, much less settle, any claims to Medicaid eligibility that Petitioner may have had.

THEREFORE, it is on this ^{18th} day of APRIL 2016,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the consent order and the determination that that order caused the matter to be dismissed; and

That this matter is marked as withdrawn pursuant to N.J.A.C. 1:1-19.2 as of August 6, 2015.


Meghan Davey, Director
Division of Medical Assistance
and Health Services