



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Li. Governor

MEGHAN DAVEY
Director

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

E.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

PASSAIC COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 13935-15

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the OAL case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is May 5, 2016

in accordance with an Order of Extension. The Initial Decision in this matter was received on February 10, 2016.

On August 15, 2012, Petitioner was admitted to Lakeview Subacute Care Center (Lakeview). On December 2, 2014, Petitioner's daughter, J.M., submitted a Medicaid application on behalf of Petitioner to the Passaic County Board of Social Services (PCBSS). This was Petitioner's third application for Medicaid benefits.¹ Petitioner's first two applications were denied for failure to provide verifications.² On December 23, 2014, Petitioner's daughter, J.M., was appointed his guardian. On July 10, 2015, PCBSS approved Petitioner's third application for benefits with eligibility retroactive to September 1, 2014 pursuant to N.J.A.C. 10:71-2.16(a). On July 22, 2015, Petitioner requested a fair hearing contesting the date of eligibility. On August 26, 2015, the matter was transmitted to the Office of Administrative Law (OAL). The ALJ found that PCBSS properly determined the effective date of Petitioner's eligibility. For the reasons that follow, I hereby ADOPT the Initial Decision.

On July 22, 2015, Future Care Consultants (FCC) requested a hearing on behalf of J.M. contesting PCBSS' eligibility determination of Petitioner's third Medicaid application, which granted Petitioner eligibility beginning September 1, 2014. N.J.A.C. 10:71-2.16 permits retroactive eligibility for the Medicaid Only Program beginning with the third month prior to the month of application, provided members of an eligibility group have incurred expenses for covered

¹ On December 2, 2012, J.M. filed the first Medicaid application on behalf of Petitioner. On February 27, 2014, Petitioner's authorized representative, E.M. of FCC, filed a second Medicaid application on his behalf.

² On January 17, 2013, PBCSS denied Petitioner's first Medicaid application for failure to provide verifications. On April 8, 2014, PCBSS denied Petitioner's second Medicaid application for failure to provide verifications.

services within that period that have not yet been paid. Here, J.M. filed on application on Petitioner's behalf on December 2, 2014. Therefore, the earliest possible date that Petitioner could be found eligible is September 1, 2104. Petitioner has not made any arguments as to why, based on the date of his third application, the September 1, 2014 date is incorrect.

Rather, in seeking an eligibility date of September 2012, Petitioner argues the validity of the PCBSS' denial of his first two applications, neither of which is currently before the court. In fact, Petitioner did not request a fair hearing after the denial of his first Medicaid application; and Petitioner's request for fair hearing with regard to the denial of his second application for Medicaid benefits was denied for having exceeded the 20 day period pursuant to N.J.A.C. 10: 49-10.3(b)(3) by a minimum of 308 days. This matter is currently on appeal with the Appellate Division.³ Nevertheless, Petitioner used the current OAL hearing, not as an opportunity to address the merits of the third application, but to argue the merits of his first and second Medicaid applications, as well as argue the timeliness of Petitioner's request for a fair hearing with regard to his second Medicaid application. In fact, Petitioner's exceptions make clear his intent to establish that he tolled the time period to perfect his appeal of the second application.

In so doing, Petitioner asserts that he was unable to access the requested verifications because he was incapacitated. Although not properly before her, the ALJ explored the merits of Petitioner's arguments and correctly determined

³ On January 8, 2016, Petitioner filed an appeal with the New Jersey Superior Court, Appellate Division, appealing DMAHS' November 24, 2015 denial of his request for a fair hearing which came eighteen months after the original denial and ten months after the order of guardianship was issued.


that Petitioner had not established a lack of access to the verifications requested by PCBSS and that Petitioner abandoned his appeal of PCBSS' second denial. The New Jersey Superior Court, Appellate Division has upheld the denial of an application where the applicant argued that her assets were not available through no fault of her own. In S.D. vs. DMAHS and Bergen County Board of Social Services, the court found that the applicant, who had a power of attorney and then a guardian, had "the capacity, through her representatives, to access her resources." S.D. vs. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013). Here, the applicant was denied for failing to provide the information necessary to determine his financial eligibility for Medicaid benefits but the same reasoning applies.

A verified complaint for guardianship was not filed until September 29, 2014 and Petitioner was not deemed incapacitated until December 23, 2014. The question of Petitioner's capacity was not raised during the first two applications or when he authorized FCC to represent him in the Medicaid application process. Petitioner had not been deemed incapacitated at the time of his Medicaid applications and there is no indication that his daughter, J.M., who became his court appointed guardian and filed the first Medicaid application on Petitioner's behalf, was not assisting him in the application process. There is nothing in the record to demonstrate that Petitioner lacked the ability, himself or through J.M., to provide PCBSS with the requested information on either of his first two applications when J.M. was able to provide those verifications by the time of the third application. Furthermore, there is nothing in the record to dispute PCBSS' determination of a September 1, 2014 date of eligibility.

THEREFORE, it is on this 3RD day of MAY 2016,

ORDERED:

That the Initial Decision affirming the September 1, 2014 effective date for Medicaid eligibility is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services