



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

P.B.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ATLANTIC COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 15088-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the case file and the documents in evidence. Respondent filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is July 18, 2016 in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's November 2, 2014 application for Medicaid benefits. B.M., Petitioner's daughter, signed the application.¹ By notice dated November 12, 2014, Atlantic County requested a list of documents regarding Petitioner's finances including life insurance, a Wells Fargo account and a rental lease. R-1 at 23. When the information was not provided, two more letters requesting substantially the same information were sent on August 12 and 28, 2015. R-1 at 14-16. When that information was still not provided, the application was denied on September 11, 2015. Petitioner passed away May 16, 2015.

The issue below was whether Petitioner timely provided the necessary verifications for Atlantic County to make an eligibility determination. Both the County Welfare Agency (CWA) and the applicant have responsibilities with regard to the application process. N.J.A.C. 10:71-2.2. Applicants must complete any forms required by the CWA; assist the CWA in securing evidence that corroborates his or her statements; and promptly report any change affecting his or her circumstance. N.J.A.C. 10:71-2.2(e). The CWA exercises direct responsibility in the application process to inform applicants about the process, eligibility requirements and their right to a fair hearing; receive applications; assist applicants in exploring their eligibility; make known the appropriate resources and services; assure the prompt accurate submission of data; and promptly notify applicants of eligibility or ineligibility. N.J.A.C. 10:71-2.2(c) and (d). CWAs must determine eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days. N.J.A.C. 10:71-2.3(a); MedCom No. 10-09, and Fed. Reg. 42

¹ The Initial Decision reverses B.M.'s initials.

CFR 435.91. The time frame may be extended when “documented exceptional circumstances arise” preventing the processing of the application within the prescribed time limits. N.J.A.C. 10:71-2.3(c). The regulation does not require Atlantic County to grant an extension beyond the designated time period when the delay is due to circumstances outside the control of both the applicant and the CWA. At best, an extension is permissible. N.J.A.C. 10:71-2.3; S.D. vs. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013). There is simply nothing in the record to demonstrate Petitioner asked for, or that Petitioner had exceptional circumstances warranting, additional time to provide the requested verifications.

Petitioner, through her daughter B.M., was able to produce some financial information that Atlantic County placed in a four-page spreadsheet. That document shows deposits and withdrawals from a number of accounts. There was a Janney Montgomery Scott account, a Wells Fargo account, Certificates of Deposit as well as withdrawals and deposits of thousands of dollars. R-1 at 17-20. Atlantic County required additional information regarding these transactions so as to ascertain if eligibility could be established and if there were any transfers of assets.

The Initial Decision determined that Petitioner’s daughter was entitled to more time to gather information regarding Petitioner’s application. In concluding this, the Initial Decision relied on two New York cases as well as arguing sua sponte that Petitioner was entitled to equitable relief under two separate doctrines and well as protections under the Fourteen Amendment to the United States Constitution to protect her “property right to collect from the program.” ID

at 19. There is also a couched Americans with Disabilities Act (ADA) defense that the court also raised for Petitioner. See ID at 19. None of these legal or equitable issues were raised by Petitioner. I FIND that these cases are inapplicable and that there is no support in law or the record to warrant more time.

The Initial Decision relies on two New York cases from 1982 and 1998 respectively. ID at 12 and 14. These cases predate Congress's passage of much more stringent requirements to restrict the ability of individuals to shelter resources in order to qualify for Medicaid, including tighter rules regarding the transfer of assets. See Omnibus Budget Reconciliation Act (OBRA) of 1993, 107 Stat. 312, codified at 42 U.S.C.A. § 1396p. On February 8, 2006, Congress enacted the Deficit Reduction Act of 2005 (DRA) (109 P.L. 171), § 6012, the purpose of which, in part, was to again close transfer of asset loopholes that allowed Medicaid eligibility for those who had sufficient assets to pay for their own medical care by mandating a five-year lookback and changing the date on which to start a transfer penalty.

Rather there are recent cases in New Jersey that uphold the denial including S.D. vs. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013). In that case, the Appellate Division upheld the denial of a Medicaid application where the appellant who had a POA, and later a guardian, to help provide information. In addition to the POA and guardian, the nursing home and its attorney also helped gather information. The court found "neither [the nursing facility] nor its counsel . . . obtained the verification information requested by BCBSS in a timely manner; however, there

is no evidence that they were unable to obtain the verification information because they were not S.D.'s attorneys-in-fact, and they did provide some of the requested verification themselves, without [the POA's] assistance." Slip. Op. at 14.

In the instant case, Petitioner's daughter was able to obtain information regarding her assets as evidenced by the four page spreadsheet. B.M. failed to fully explain how she was able to provide some documents but not others.² The record also shows that a POA was available to act on Petitioners' behalf prior to her death and that an estate administrator may have been able to act after her death.³ In a letter dated April 15, 2016, Atlantic County noted that the medical documents Petitioner's daughter produced in the pendency of the hearing showed that another daughter, L.F., was listed by the nursing home as being Petitioner's Power of Attorney (POA) and actively participated in the treatment plan for Petitioner's. C-1 at 2 and 6. The record is silent as to why L.F. did not appear at the hearing or obtain the requested documents while Petitioner was alive.

With a POA, Petitioner would be able to access the required documents and contact financial institutions. After she entered the nursing facility in September 2014, the spreadsheet indicates that Petitioner's accounts had online

² In exceptions, Respondent notes that during the first day of hearing, Atlantic County stated that "a notation on a check indicated another account may exist." While this account was not mentioned prior to the denial notice, Petitioner's daughter was able to bring in a statement from that account at the next hearing date. This belies the claim that the financial information was unavailable to B.M.

³ In a letter dated December 7, 2015, an attorney notified the prior ALJ that he represented "the interests of the Estate of Patricia Barrett". The record does not indicate if B.M. was ever appointed as the administrator of Petitioner's estate as mentioned in the attorney's January 19, 2016 letter.

transfers October and November 2014, indicating someone had the ability and authority to manage her accounts. R-1 at 19.

The death of Petitioner's husband in January 2014, not May 2015 as set forth in the Initial Decision, may have required an accounting of the couple's assets which would have helped Petitioner's Medicaid application. The accounts Petitioner provided demonstrated that while he was alive there were large deposits to and withdrawals from those accounts. For example, on May 26, 2011, there is a deposit for \$21,998.23. The following day a check was made out to Petitioner for \$9,600.

While Petitioner may have lost records in Hurricane Sandy in 2012, enough records were available to fill out the spreadsheet with deposits and withdrawals that pre-date the storm. Indeed, the only transactions on the second page of the document are from 2010-2011. R-1 at 18. Thus, I find that this alleged impediment is not supported by the record.

In finding that Petitioner has an equitable remedy, the Initial Decision delves into the doctrine of substantial compliance to cite a long list of cases, none of which concern Medicaid or any federal benefit and are based on litigation that originated in Superior Court. Even if this doctrine were to apply, Petitioner has not met the elements to demonstrate the "series of steps taken to comply with the statute involved;" "general compliance with the purpose of the statute or "reasonable explanation as to why there was not strict compliance with the statute." ID at 18. The record contains no letters, emails or other correspondence from Petitioner's daughter to obtain the documents requested by Atlantic County.

Moreover, Petitioner is not being denied access to the Medicaid program due to her disability. Rather, the Initial Decision relies on the ADA in an attempt to change the application and eligibility requirements, a fundamental alteration of the state's services and programs. Neither Olmstead v. Zimring, 527 U.S. 581 (1999) nor its progeny impose a requirement that the State grant eligibility where none has been established merely due to a disability.

Federal law requires prompt review of all Medicaid applications. 42 U.S.C.A. § 1396a(a)(8). See also N.J.A.C. 10:71-2.3. An applicant is responsible for providing any information required by the county as part of the application process, including evidence corroborating her statements. N.J.A.C. 10:71-2.2(e). The county must verify the value of all resources. N.J.A.C. 10:71-4.1(d)(3). To process the application without this information would contravene Medicaid rules requiring verification of all finances and all statements made on a Medicaid application.

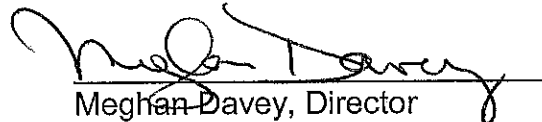
While there was delay in Atlantic County's handling of the case, Petitioner did not provide the information necessary to establish Medicaid eligibility. Atlantic County could not process the application as there were still assets and accounts unaccounted for and transactions that needed explanation. Petitioner had a POA, had access to documents that pre-dated Hurricane Sandy and was able to retrieve some information quickly. The records requested in August 2015 are essentially the same as those requested in November 2014 when she applied. Without these records, there is no evidence that Petitioner was eligible for benefits or that she was not subject to a transfer penalty. Thus, I hereby REVERSE the Initial Decision.

Based on my review of the record and for the reasons set forth above I hereby REVERSE the Initial Decision.

THEREFORE, it is on this ^{14th} day of JULY 2016

ORDERED:

That the Initial Decision is hereby REVERSED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services