



## State of New Jersey

DEPARTMENT OF HUMAN SERVICES

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

D.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

**ADMINISTRATIVE ACTION**

AND HEALTH SERVICES AND

**FINAL AGENCY DECISION**

GLOUCESTER COUNTY BOARD OF

**OAL DKT. NO. HMA 04663-2019**

SOCIAL SERVICES,

RESPONDENTS.

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 24, 2020 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's third Medicaid application due to the failure to provide information. Petitioner, through Jannell Thomas (Thomas), an employee of the nursing home where she resided, filed this application on May 23, 2019. Thomas had been authorized by Bonnie Laube, Esq. (Laube) who had been appointed

guardian in February 2018. Gloucester County requested additional information beginning on June 24, 2019 and sought documents that were requested in the prior applications as well as an update on Petitioner's current finances including evidence that the QIT was funded and where the lottery winnings were deposited. R-2. There was a deadline of July 16, 2019.

Jenimae Almquist, Esq. (Almquist) counsel for the nursing home, responded on July 5, 2019 with some information and stated that the lottery winnings were deposited in the QIT and verification would be provided under separate cover.<sup>1</sup> P-32. The July 16<sup>th</sup> deadline passed without additional submissions or a request for an extension. On July 23 Almquist submitted documents related to the QIT but not the QIT bank statement ending on July 9<sup>th</sup> that would have encompassed the deposit of the June lottery payment. ID at 8-9. She stated that the July 2019 statement "is not yet available but is on request from the bank" and requested an extension of time. No further documents were sent. Gloucester County issued a denial letter on August 26, 2019.

The Initial Decision upholds the denial, finding that Petitioner failed to provide verifications needed to determine eligibility. ID at 19. Moreover, as the record and the testimony demonstrate, Petitioner's various attorneys charged with assisting her had the requested information prior to the denial letter but never submitted the information to Gloucester County. At no time did any of Petitioner's attorneys provide Gloucester County with the QIT bank statement that would demonstrate that the lottery winning had been deposited so as to become income eligible.<sup>2</sup>

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<sup>1</sup> The matter was transmitted by DMAHS listing Jannell Thomas as Petitioner's authorized representative designated by Petitioner's guardian, Bonnie Laube, Esq. P-29. Jenimae Almquist, Esq. of Cowart Dizzia appeared at the hearing. Nothing in the record shows that Almquist represents Petitioner or that Laube authorized or retained Almquist to represent Petitioner. See P-10. As the Initial Decision noted, Almquist "identified her client as . . .the facility where petitioner is a resident." ID at 1 fn.1.

<sup>2</sup> After requesting additional time in the July 23<sup>rd</sup> letter to provide the QIT statement that would have encompassed the June lottery payment, Almquist alleged in a September 5, 2019 letter that all documents had been provided in the July 23<sup>rd</sup> submission. P-36. At the hearing she reversed course and argued that the information was unavailable. Nothing in the correspondence from Almquist to Gloucester County prior to the denial letter being issued ever claimed that the information requested was unavailable.

Unbeknownst to Gloucester County, during the application process Laube had received a notice dated May 23, 2019 that the lottery winnings would be garnished for a student loan that Petitioner had co-signed. P-30. That notice gave Laube 10 days to appeal the garnishment which does not appear to have been done. However, Laube's testimony was that the garnishment information had been shared with Almquist and Zachariasevych on June 2, 2019. ID at 7 and T1 at 93:22-25 and T1 at 96:1-19. Although, Laube testified that she believed she did not receive copies of the July and August QIT statements from the trustee, Zachariasevych, she acknowledged that the QIT statements for those months were not provided to Gloucester County prior to the denial. Zachariasevych was not called to testify.

Sometime in July 2019, Laube realized she had not received the June lottery check. At that point she discovered that as the May 23 letter advised, the garnishment had attached to the lottery check. When questioned by Almquist at the hearing about providing the garnishment information to "the team" and Gloucester County. Laube replied "No, I informed you and I -- and I thought that you informed them." T1 at 113: 2-7.

The ALJ found that the QIT statements that would encompass the June 2019 lottery payment were never provided to Gloucester County prior to the August 26, 2019 denial letter "despite [counsel for the nursing home] indicating further documentation would be forthcoming." ID at 19. Moreover, the notice of garnishment was provided to Almquist on June 2, 2019 but never provided to Gloucester County in either the July 5<sup>th</sup> or July 23<sup>rd</sup> letter. Ibid. As such the denial of the application for failure to provide information was warranted.

In exceptions, counsel for the nursing home claims that the denial was improper because the lien on the lottery winnings was "unbeknownst to the DAR while the Guardian worked to oppose that lien." Exceptions at 2. Nothing in the record supports this statement. Rather the direct testimony by Laube explicitly contradicts the assertion that the garnishment was unknown to the DAR. Laube testified she told Almquist, who stated she represents the

DAR about the garnishment on June 2, 2019 and Laube expected that she would relay the information to Gloucester County. T1 at 113: 2-7. That was not done.

There also does not appear to have been any work to oppose the garnishment until long after the June lottery check was withheld. The May 23<sup>rd</sup> letter explicitly states that unless appealed “the past due amount will be withheld from your lottery winnings.” P-30 (emphasis added). It was not until September 2019 that there was any inquiries to reverse the garnishment. P-34.

The exceptions also attempt to resurrect an argument that the Gloucester County caseworker did not communicate with Almquist. As the ALJ noted, these allegations ‘were not developed during the hearing . . . were personal to the DAR’s counsel, and she did not testify as a fact witness.’ ID at 19, fn. 4. Any reference to these allegations are disregarded.

Finally, counsel for the nursing home took exception, again without citation, to the Initial Decision’s consideration of prior Medicaid applications. Surprisingly, she then argues that a remand is warranted “to examine the impact of late notices of prior applications”. Exceptions at 6. It must be noted that the documents and testimony related to the prior application were all introduced by Petitioner’s counsel. See P-10, P-15, P-16 and P-20 and T1 at 123-132. To the extent there was any reliance in the Initial Decision, which Petitioner has not identified, it was her counsel that entered evidence of the prior applications so she cannot complain that this was arbitrary. Furthermore, Petitioner, through counsel Zachariasevych, appealed and then withdrew one of the prior denials in 2018. OAL Dkt. HMA 09347-2018.

Additionally, counsel’s arguments at the hearing and again in exceptions that Petitioner could not provide documents regarding her QIT is specious at best. Petitioner had three attorneys working on her case. According to her guardian, she communicated with Zachariasevych, and Almquist during the application process. Laube had also designated two separate employees of the nursing home where Petitioner resided to be the Designated

Authorized Representative. (DAR). Cheryl Soistman (Soistman) and Thomas filed three applications in total for Petitioner. Laube stated she "allowed [the nursing facility] to take the – to take the lead and I knew that they had counsel as well although I hadn't met you [Almquist] yet." T1 at 32:15-18. I note that Soistman, Thomas, Zachariasevych and Almquist did not testify at the hearing.

Thus, for the reasons set forth above and those contained in the Initial Decision, I agree that Gloucester County properly denied the application and ADOPT the Initial Decision. The information that was requested for the May 2019 application was shared amongst the attorneys working for Petitioner in June and July 2019. No reason was presented as to why that information was not provided to Gloucester County prior to the August 2019 denial letter.

THEREFORE, it is on this <sup>22<sup>nd</sup> day of SEPTEMBER 2020,</sup>

ORDERED:

That the Initial Decision is hereby ADOPTED.

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