



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

E.T.,

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 580-2019

As Assistant Commissioner of 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 27, 2020 in accordance with an Order of Extension.

An application was filed on Petitioner's behalf in November 2018. The application was signed by Petitioner's Power of Attorney (POA), however, Mindel Silberman of Future Care Consultants identified herself as Petitioner's Designated Authorized Representative (DAR) and the contact person for the application. Despite making this representation, Silberman did not provide the DAR nor did she provide a copy of the POA.¹ Passaic County mailed the denial to the Petitioner in December 2018. The basis for the denial was the failure to provide a DAR.

The matter was transmitted to OAL and the parties agreed to file mutual motions for summary decision as the facts were not in dispute. As the ALJ noted, absent a valid DAR, Passaic County did not have authority to recognize Silberman as Petitioner's representative. In citing the priority of individuals initiating an application the Initial Decision finds that there is no evidence that Silberman was designated by the institutional facility. N.J.A.C. 10:71-2.5. However, this designation applies to a staff member of the institution or facility where the individual is receiving care. Silberman is not a staff member of the facility where Petitioner is receiving care. Petitioner resides in a New Jersey nursing facility. Silberman works for Future Care, a company located in Brooklyn, which has been identified as the billing agent of other nursing facilities. See G.C. v. DMAHS and Passaic CBOSS, OAL Dkt. No. HMA 3582-2019. See also N.J.A.C. 10:49-9.7 regarding maintaining the confidentiality of an applicant's information. Thus, I FIND that Passaic County was correct to not recognize Silberman as Petitioner's representative.

However, the Initial Decision goes on to state that the denial should be reversed due to the incorrect regulation cited in the outcome letter. While this is not a bar per se to denying a case where eligibility cannot be established, the lack of a DAR does not result in a denial. Rather the case can be processed without speaking to Silberman. Petitioner,

¹ When the DAR was finally produced for the fair hearing, Silberman was not identified as Petitioner's DAR. That DAR was dated December 28, 2018 and named another employee of Future Care. Petitioner then retained an attorney, Michael Heinemann, to represent her at the hearing.

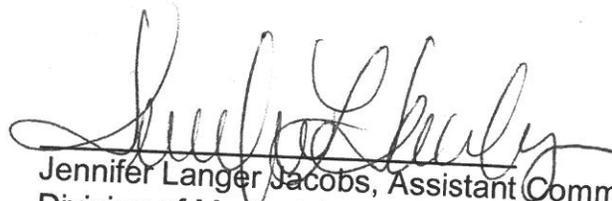
who was able to sign the DAR after the denial was issued, should have been contacted at the nursing facility to provide documentation or evidence to support her application. Thus, while I agree that Passaic County should process the application, I REVERSE the reasoning set forth in the Initial Decision.

THEREFORE, it is on this ^{24th} day of JANUARY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED, in part, and REVERSED, in part, as set forth above; and

That Passaic County shall process the November 2018 application.



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