

This case arises from the Middlesex County Board of Social Services' (MCBSS) April 27, 2017 notice of Petitioner's continued Medicaid eligibility and the May 2, 2017 Statement of Available Income, PR-1 #2. The notice addressed the Petitioner's redetermination, continued eligibility and available income as referenced in form PR-1#2, and not her initial assessment referenced as PR-1 #1. Accordingly, the matter was transmitted to the OAL for the purpose of disputing MCBSS' most recent determination.

On October 11, 2017, Petitioner filed a motion with the OAL to expand the scope of the hearing to include her appeal of the cost share determination pursuant to PR-1 #1.¹ The ALJ noted that Petitioner's request for hearing challenged a previous determination and found that DMAHS' transmittal, without further clarification was sufficient to expand the scope of the hearing over the transmitting agency's objection. I disagree. Petitioner's request, in and of itself, is not determinative of the issues at hearing. Administrative agencies have the discretion to determine whether a case is contested. N.J.S.A. 52:14f-7(a). The OAL acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2(a). A contested case is commenced in the State agency with appropriate subject matter jurisdiction. N.J.A.C. 1:1-3.1. DMAHS is the administrative agency within the Department of Human Services (DHS) that is charged with administering the Medicaid program. N.J.S.A. 30:4D-4. On May 12, 2017, DMAHS received Petitioner's request for fair hearing, which included the May 2, 2017 PR-1 form which set forth Petitioner's most recent available income determination. This was transmitted to the OAL.

The ALJ held that DMAHS' objection to Petitioner's request and clarification of its intended transmittal was insufficient to define the scope of the issues before the OAL. In the absence of a request to have the file returned, the ALJ chose to accept the Petitioner's framing of the issue before the court. It should be noted that mere reference to a previous assessment, as is found in the PR-1 form at issue, should not automatically result in an

¹ The motion also sought to add the Division of Aging Services and the Division of Medical Assistance and Health Services as Respondents and requested discovery be allowed at the OAL hearing.

opportunity to appeal an approximately six month old determination. However, Petitioner claims to have never received a copy of the PR-1 #1, and the record does not address this claim.² Assuming *arguendo* that the notice was inadequate, inadequate notice is a procedural defect that may be cured by a *de novo* hearing. In re Appeal of Darcy, 114 N.J. Super. 454, 461 (App. Div. 1971); Matthews v. Eldridge, 424 U.S. 319, 333 (1976). Therefore, I REMANDING this matter in the first instance to determine if or when Petitioner received notice of the PR-1#1 determination.

If the Petitioner did not receive notice and the scope of the hearing is to include the amount of income available for Medicaid payment in November and December 2016, it must also address the type and level of coverage received by Petitioner during that time. As stated by the ALJ, "The amount of income available for Medicaid payment in November and December 2016 depends on whether Petitioner was entitled to a 180 day short-term nursing facility stay under Special Terms and Conditions (STC) #32." Letter Order at 6.

STC #32 Short Term Nursing Facility Stays provides:

Coverage of nursing facility care for up to no more than 180 days is available to a HCBS/MLTSS demonstration participant receiving home and community-based services upon admission who requires temporary placement in a nursing facility when such participant is reasonably expected to be discharged and to resume HCBS participate within no more than 180 days including situations when a participant needs skilled or rehabilitative services for no more than 180 days due either to the temporary illness of the participant or absence of a primary caregiver.

- A. Such HCBS/MLTSS demonstration participants must meet the nursing facility level of care upon admission, and in such cases, while receiving short-term nursing facility care may continue enrollment in the demonstration pending discharge from the nursing facility with no more than 180 days or until such time that it is determined that the discharge within 180 days from admission is not likely to occur...

Whether Petitioner is entitled to a short-term nursing facility stay under STC requires a clinical determination that Petitioner's condition is temporary and discharge is likely to occur

² There is no witness testimony or certification of Petitioner to support the allegation that Middlesex County did not provide her with the required notice.

within 180 days. It is not based solely on Petitioner's expectation or desire to return home.³ I am bothered by the lack of direct evidence in this regard. Petitioner's attorney appeared at the hearing and served as both lawyer and witness. In her briefs, she made several assertions with regard to what Petitioner felt or thought, as well as, what individuals at both the nursing facility and NJ Horizon Health (Horizon) knew or did not know when making their decisions, and what they may have said to her in meetings or conversations. The documents admitted as evidence mostly consist of one sided emails from Petitioner's attorney and internal computer printouts from Horizon and the New Jersey Department of Human Services. No one appeared to authenticate or testify to the substance or effect of these documents. Nor was anyone called to testify to the alleged conversations they had with Petitioner or her attorney regarding either her placement or her transition home.

Unlike the ALJ, I see no clear evidence that Petitioner's stay was decidedly temporary through December 2016. In fact, the record shows some potential conflicts in this regard. In one email, Petitioner's attorney writes "There seems to be some confusion about her [Petitioner] discharge planning, she tells me one thing...the social worker tells me something slightly different." (P9). In another email, a Horizon employee states, "Member reported increased need for help to complete tasks which made her decide to stay at the nursing facility. Member reported her daughters agree with her decision as well." (P-8). Additionally, the ALJ finds a PCA assessment as evidence of intention to discharge, yet there is no PCA assessment in the record.

The ALJ also finds the occurrence of discharge meetings to be evidence of their intent to discharge. However, the emails indicate that these meetings were requested by Petitioner's attorney. (P9, P10). Therefore, the occurrence of the meeting, at Petitioner's request, without testimony regarding what actually transpired at the meetings, does little to

³ Petitioner's brief is filled with statements unsupported by testimony or certification of Petitioner stating that "she wanted to leave...but felt the nursing home and Horizon NJ Health were trying to keep her...against her will and thwarting her efforts to return home," and "it was her intent to return home within six months." (P-12, Pb at 9). These statements alone do no support a finding that Petitioner required only temporary placement.

confirm the intent of all parties, or Petitioner's ability to return home.

Therefore, I am REMANDING this matter to the OAL for testimony and additional documentation to support Petitioner's assertion that her medical need for nursing facility care was temporary.

THEREFORE, it is on this 21st day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED for further proceedings to determine whether Petitioner was entitled to a 180 day short-term nursing facility stay under Special Terms and Conditions (STC) #32.



Jennifer Langer Jacobs, Director
Division of Medical Assistance
and Health Services

RP
Recipient

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VS
Middlesex County Board of Social Services

Name of Contested Case or Short Title

COUNTY Middlesex

JURISDICTION South

Agency Docket / Reference Number

Remanded for additional proceedings.

_____ Day(s) or 1 Hours

Yes No If yes, please specify requirements and citation: _____

Yes No

REMANDED

Yes No Uncertain

Yes No If no, the documents shall be served on or offered to parties on: _____

THE FOLLOWING ADDITIONAL INFORMATION IS REQUIRED:

1. Nature of the case. Please include references to statutes or rules and briefly summarize the facts and law involved. Attach pleadings to this form.

2. Estimated time required for hearing.

3. Legal requirements (State or Federal) mandating a date for Agency Decision:

4. Is court stenographer requested?

5. Special features to be anticipated in this matter, i.e. emergent relief, discovery motions, prehearing conference, conference hearing, remand, expedited hearings, location (county).

6. Is a barrier-free location needed?

7. Have the attached documents been exchanged between the parties?

8. Names of other agencies claiming jurisdiction over transmitted dispute:

Transmitting officer or other agency personnel to receive notices of hearing etc., pursuant to N.J.A.C. 1:1-8.2 (a) 13. This person need not be served by the parties with motions, correspondence, etc.

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SERVICE LIST

Parties Named in this Proceeding and their Representatives.

For additional parties, attach names, addresses and telephone numbers of each party linked with that representative if any.

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