

State of New Jersey

CHRIS CHRISTIE

Governor

KIM GUADAGNO Lt. Governor DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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JENNIFER VELEZ
Commissioner

VALERIE HARR Director

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

A.V.,

PETITIONER,

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

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OAL DKT. NO. HMA 09177-14

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

NORTHERN REGIONAL COMMUNITY:

CHOICE OPTIONS OFFICE,

RESPONDENTS.

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, the contents of the OAL case file and the Division of Aging Services' exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 20, 2014 in accordance with N.J.S.A. 52:14B-10, which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on October 6, 2014.

Based upon my review of the record and for the reasons which follow, I hereby REVERSE the recommended decision of the Administrative Law Judge. The credible evidence in this record indicates that Petitioner does not satisfy the clinical eligibility criteria necessary to qualify for the AIDS Community Care Alternatives (ACCAP) waiver program, which is now encompassed by the Comprehensive Medicaid Waiver. I note that, beginning July 1, 2014, participants in the ACCAP waiver were enrolled in the Managed Long Term Services and Supports (MLTSS) program through their current Medicaid managed care organization (MCO). The MLTSS program provides comprehensive services and supports to help eligible beneficiaries remain living in the community rather than in a nursing facility.

In order for an applicant to qualify for MLTSS, like lthe ACCAP waiver, he or she must be in need of nursing home level of care. Eligibility for nursing facility services is determined by the professional staff designated by the Department based on a comprehensive needs assessment that demonstrates that the beneficiary requires nursing home level of care. N.J.A.C. 8:85-2.1. In this case, the designated party is the Division of Aging Services' Office of Community Choice Options. One of its registered nurses assessed the Petitioner in his home and using the NJ Choice standardized assessment tool determined that A.V. is neither cognitively impaired nor dependent in the activities of daily living and therefore does not meet nursing facility level of care as required by N.J.A.C. 8:85-2.1. Petitioner presented no evidence to contradict this determination.

Moreover, contrary to the ALJ's contention, a physician's assessment or additional clinical data is not required to support this determination. The ALJ is

confusing the assessment that is performed to determine if an individual meets

nursing home level of care with the one that is conducted once an individual has

actually entered a nursing home. Thus, while N.J.A.C. 8:85-2.2, the regulation

relied upon the ALJ, sets forth the nursing services that are needed by and

provided to eligible Medicaid beneficiaries; this regulation does not address the

eligibility criteria needed to meet the nursing facility level of care requirement that

permits MLTSS' services to be provided in the community.

I note that the Division of Aging Services has offered to counsel and

assist A.V. on the availability of AIDS/HIV services and benefits through a

number of County programs and I encourage A.V. to work with the Division in

this regard.

THEREFORE, it is on this 13th day of November 2014,

ORDERED:

That the Initial Decision reversing the termination of Petitioner's clinical

eligibility for continued waiver services is hereby REVERSED.

Valerie J. Harr, Director

Division of Medical Assistance

and Health Services

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