



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712
TRENTON, NJ 08625-0712

PHILIP D. MURPHY
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.H.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

HUDSON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 14649-2018

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 briefs filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 18, 2019 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid application due to the failure to provide information. In May 2015 Petitioner applied to the Hudson County Department of Family Services for Medicaid benefits through her designated authorized representative (DAR), Esther Schulgasser (Schulgasser) of Future Care Consultants, LLC (FCC). Petitioner passed away on August 2, 2015, while her application was pending.

On October 13, 2015, Hudson County denied Petitioner's Medicaid application, due to her failure to provide necessary verifications -- specifically, bank records -- as required by N.J.A.C. 10:71-2.2(e) and N.J.A.C. 10:71-3.1(b).

Petitioner, through FCC, applied in June 2015 after being admitted to the nursing facility in May 2015. Hudson County sent out a missing information letter on June 29, 2015 requesting among other things Petitioner's bank records. On June 30, 2015, Schulgasser sent an email to Hudson County stating that Petitioner had passed away. Respondent's Brief at Exhibit B. However, all records show that she died on August 2, 2015. Hudson County immediately responded that Petitioner and her late husband's accounts would need to be produced to determine eligibility. For the next month, Hudson County, under the impression that Petitioner was deceased, sought to help Schulgasser get information about the assets despite the fact Petitioner was still alive. The record contains no evidence that Schulgasser sought records while Petitioner was still alive but she was able to create an online account for FCC to receive Petitioner's Social Security benefits. Respondent's Brief at Exhibit B.

By notice dated August 4, 2015, Hudson County again requested information about Petitioner's bank accounts. Her brother provided information about a letter he wrote seeking the bank statements at issue. Her brother also stated he was not the executor and would not be seeking such an appointment. Respondent's Brief at Exhibit B. The documents were never provided and Hudson County denied the case on October 13, 2015.

Schulgasser sought to appeal the denial but was told to provide a DAR signed by the estate. Instead of providing one, FCC's counsel, Schutjer Bogar, appealed to the Appellate Division for agency inaction. Turning on the issue that the need for a DAR signed by the estate should have been reduced to writing with appellate rights, the court reversed and remanded the matter for a hearing at the OAL to address these issues.

After receiving motions for summary decision from both parties, the Initial Decision upholds the denial and I concur.¹ 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).

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. Under the regulations, “[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period” a transfer penalty of ineligibility is assessed. N.J.A.C. 10:71-4.10 (c). One type of transfer is when a surviving spouse such as Petitioner fails to seek, at minimum, her elective share of her deceased spouse’s estate. See Tannler v. DHSS, 211 Wis. 2d 179, 564 N.W.2d 735 (1997); Estate of Michael DeMartino v. DMAHS, 373 N.J. Super. 210 (App. Div. 2004) (Testamentary trust created by will, equal to widower’s elective share, viewed as a means to limit widower’s ownership of his elective share and a transfer of resources); I.G. v. DMAHS, 386 N.J. Super. 282 (App. Div. 2006) (Widow’s waiver of spousal share effectively transferred one-third of estate to a trust without compensation). As such, her spouse’s assets must be examined to determine any impact on Petitioner’s eligibility.

The record does not contain any proof that Petitioner or Schulgasser sought information regarding Petitioner’s assets until after she had passed away. The record does show that Hudson County assisted Schulgasser with information but was operating under

¹ The motion for summary disposition states that the law firm, Schutjer Bogar, and Laurie Higgins, Esq. are appearing as attorney for the Petitioner. However, no estate has been opened that would permit such representation as “[a]n earthly court has no jurisdiction over the dead.” Stroman v. Brown, 194 N.J. Super. 307, 313 (1984) (quoting In re Admiral Sampson B & L Ass’n, 136 N.J. Eq. 292, 293 (Ch. 1945)).

Schulgasser's untrue statement that Petitioner had died in June 2015. At no time after Petitioner's demise did Petitioner's surviving brother or Schulgasser seek appointment as executor or to subpoena the bank records. ID at 5.

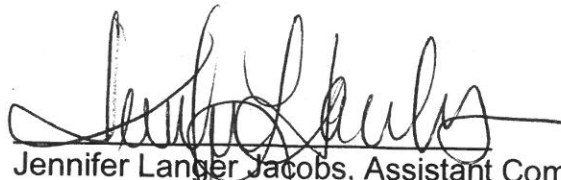
Petitioner tries to parse out the bank records required from Petitioner and her husband who had died in January 2015. Hudson County informed Schulgasser on the day she misrepresented Petitioner had died that Hudson County would need her and her late husband's bank accounts. When Hudson County sought advice from DMAHS in July 2015 on accessing his records the advice was premised on Schulgasser's statement she could not access them "since they are both deceased." Respondent's Brief at Exhibit B. Again, Petitioner was still alive at this time.

As the ALJ noted, the emails show that Hudson County sought to assist Schulgasser in obtaining the bank records during the nearly four months the application was pending. Nothing in the record shows what steps FCC or Schulgasser as Petitioner's DAR took to obtain the requested information. While the request for her husband's bank records appears in the emails and the denial letter, Petitioner's bank records were also requested by Hudson County multiple times in emails, the pending letter and as a basis for the denial. As neither of the couple's bank records were produced and both were required to determine eligibility, I FIND that the denial was appropriate.

THEREFORE, it is on this ^{14th} day of OCTOBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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