

State of New Jersey

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER
Lt. Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

W.L.,

PETITIONER.

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DIVISION OF MEDICAL ASSISTANCE, AND HEALTH SERVICES,

RESPONDENT.

**ADMINISTRATIVE ACTION** 

FINAL AGENCY DECISION

OAL DKT. NO. HMA 06585-19

As Assistant Commissioner for 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, and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 31, 2020 in accordance with an Order of Extension. The Initial Decision was received on June 2, 2020.

On July 11, 2017, the New Jersey Department of Human Services (DHS), the Personal Preference Program (PPP), issued a notice terminating participants J.C. and W.C. The basis for termination was cited as "inappropriate misconduct towards a PPL (Public

Partnerships LLL)¹ Consultant." The notice provided the participants with instructions to appeal the decision to the Director of the NJ Division of Disability Services (DDS). It also provided the participants with the option to continue their personal care assistance (PCA) services through their HMO provider while they disputed the termination. In response, Petitioner, identified as J.C. and W.C.'s guardian, provided a written explanation of the events leading to the participants' termination. However, he made no request on behalf of the participants to continue their PCA services through the HMO. Instead, Petitioner chose to continue to personally provide care for his nephews during their dis-enrollment from the PPP. Upon review, J.C. and W.C.'s eligibility was restored retroactively to December 1, 2017, leaving a gap in coverage from July 2017 to December 2017.

On July 3, 2018, Petitioner, in his personal capacity, filed a Superior Court Complaint (Complaint) in which he sued DHS, the Division of Disability Services (DDS), Community Access Unlimited (Community Access) and Public Partnership, LLC (PPL) for payment of wages in his capacity as J.C. and W.C.'s employee. Petitioner asserted that he was entitled to payment for assisting his nephews during their period of disenrollment. He sought damages, interest and costs totaling \$15,000. Petition did not file a claim against J.C or W.C. as his employer.

DHS moved to dismiss the complaint arguing that it was not Petitioner's employer and that he was not entitled to back pay from DHS for the time period in which J.C and W.C. were dis-enrolled from the PPP program. On December 3, 2018, the motion was granted and the matter dismissed with prejudice as to DHS, DDS and Community Access. On February 21, 2019, the Superior Court transferred the matter to the Office of Administrative Law (OAL). The Final Order crossed out language from the proposed order that would have made DHS, DDS or Community Access a party. The matter was transmitted to the OAL, with the Division of Medical Assistance and Health Services (DMAHS), the Division of DHS that administers

Public Partnerships LLL (PPL) is the contractor which acts as a fiscal intermediary operating the PPP.

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Medicaid, as defendant. On March 5, DMAHS filed for summary disposition of the matter.

Summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled to prevail as a matter of law. See Initial Decision at page 2, citing N.J.A.C. 1:1-12.5 and Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). I agree with the ALJ that there are no genuine issues of material fact that would require a hearing in this matter. Based on my review of the record, I hereby adopt the findings and conclusions of the Administrative Law Judge (ALJ).

The PPP is a program that enables participants to direct and manage their own PCA services. N.J.A.C. 10:142-1.1. Participants are given "budget authority to hire their own care providers...and compensate the care providers using financial resources that would have been paid to a provider agency within the scope of the traditional PCA delivery model." N.J.A.C. 10:142-1.2(b). Participants have the right to choose a person to help them make decisions concerning the program, to hire employees, including family members, to provide services and to be represented at meeting by a representative of their choosing, who may be a friend, relative, advocate or attorney. N.J.A.C. 10:142-1.3(a). J.C. and W.C. receive PCA benefits as participants in the PPP program. Petitioner is both their guardian and their employee. As their employee, he was hired through the PPP to provide PCA services to J.C. and W.C. Consequently, PPP participants J.C. and W.C. use their monthly cash allowance to cover the hours of PCA services provided by Petitioner.

In July 2017, J.C. and W.C. were dis-enrolled from the PPP. Participants may be disenrolled from the PPP for failure to comply with the program rules and procedures. N.J.A.C. 10:142-8.2; N.J.A.C. 10:142-8.2(b). However, the Division assists the dis-enrolled participant in accessing PCA services through traditional provider agencies. N.J.A.C. 10:142-8.2(c). Participants may contest the decision and may be reinstated if a current need is established and the Division can confirm the participant is able to manage services independently or with the aid of a representative. N.J.A.C. 10:142-9.1; N.J.A.C. 10:142-8.3(a),(b). Individuals may obtain traditional agency PCA services, in the event of any delay in reactivation of a

participant-directed services." N.J.A.C. 10:142-8.3(d). Petitioner did not elect to continue PCA services for participants through a traditional provider agency. Rather, Petitioner knowingly continued to provide services to J.C. and W.C. while they were dis-enrolled from the PPP.

Pursuant to an agreement reached with DRNJ, acting on behalf of J.C. and W.C., the participants were re-enrolled effective December 2017 and Petitioner was paid for services from December 2017 through the present. (Pt. Brf. pg. 5).2 J.C. and W.C. remained disenrolled from July 2017 to December 2017. Notwithstanding the agreement, Petitioner pursued his Complaint against DHS, DDS, Community Access and PPL claiming wages for the period of time not covered by the agreement. The matter was dismissed with prejudice as to the defendants DHS, DDD and Community Access but remained with respect to PPL, the contractor acting as fiscal intermediary for the PPP. The Final Order of the Superior Court transferring the matter to the OAL struck any reference to DHS, DDD or Community Access, as well as that part of the Order requiring J.C. and W.C. to participate in the matter. With the exclusion of DHS, DDD, Community Access, J.C. and W.C., the matter amounts to little more than a personal wage collection issue for the period of participants' dis-enrollment from the PPP, arguably an issue more appropriately determined by the New Jersey Department of Labor.3

Moreover, administrative review of an agency decision is available to PPP applicants and participants. N.J.A.C. 10:142-9.1. Petitioner is neither a PPP applicant nor a participant; nor is he acting on behalf of J.C. or W.C. As set forth in his Complaint, the action was brought in order to compensate Petitioner for services rendered to J.C. and W.C. (R. Exhibit E). Petitioner is J.C. and W.C.'s personal care assistant. Neither J.C. nor W.C. are parties in this matter. Petitioner was the only named Plaintiff in the Superior Court Complaint that was

<sup>2</sup> In September 2017, the Petitioner contacted Disability Rights of New Jersey. (Pt. Brf. pg. 4).

<sup>&</sup>lt;sup>3</sup> There is no evidence in the record before me that PPL, a fiscal intermediary, is Petitioner's employer. Rather, PPP participants employ those whom they choose to provide PCA services. In this case, Petitioner, was chosen to provide the PCA services to J.C. and W.C. In any event, Petitioner's personal claim for wages would best be determined by the New Jersey Department of Labor, not DMAHS.

ultimately transferred to the OAL. Accordingly, he is the only named Petitioner in the OAL matter. He sued in his personal capacity for lost wages, and not as guardian on behalf of J.C. or W.C. with regard to program termination. Petitioner cannot now claim that his intended purpose was to contest the termination on behalf of participants who were ultimately re-enrolled in the program by way of agreement. Therefore, Petitioner, as an employee of J.C. and W.C., is not entitled to an OAL fair hearing with regard to back pay for the period in which participants were not enrolled in the PPP program.

THEREFORE, it is on this \5 day of AUGUST 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Jennifer Langer Jacobs, Assistant Commissioner

Division of Medical Assistance

and Health Services