



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

SARAH ADELMAN
Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

A.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

UNION COUNTY BOARD OF SOCIAL

SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 15016-2019 and

OAL DKT. NO. HMA 01926-2021,

CONSOLIDATED

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 12, 2021 in accordance with an Order of Extension.

This matter arises from two separate denials of Petitioner's Medicaid application, first on August 26, 2019, due to his failure to provide information that was necessary to determine eligibility, and second, on December 23, 2020, due to excess income. The two matters were

consolidated sua sponte by Order of the Administrative Law Judge (ALJ) on March 22, 2021. Based upon my review of the record, I hereby REVERSE in part and ADOPT in part the findings and conclusions of the ALJ as set forth below.

On April 11, 2019, a Medicaid application was filed on Petitioner's behalf by his Designated Authorized Representative (DAR), Ita Gutman, an employee of the long-term care facility where Petitioner resided, beginning on August 31, 2018. R-1. Ms. Gutman relied upon Petitioner's cousin and power of attorney (POA),¹ D.M., to help assist in completing the application, as Petitioner was ill and unable to assist with his Medicaid application. ID at 3. On May 9, 2019, the Union County Board of Social Services (UCBSS) sent a letter that requested various verifications including where Petitioner's Social Security benefits were being deposited, Petitioner's health benefits card, the LTC-2 from the facility, and the POA documents for D.M. R-1. UCBSS stated that on May 16, 2019, Ms. Gutman submitted documentation regarding where Petitioner's Social Security benefits were being deposited, Petitioner's insurance card, the LTC-2 and PAS approval, and incomplete and unsigned POA documents.² Ibid. On June 3, 2019, Ms. Gutman provided bank statements related to

¹ It is unclear from the record whether D.M. had a fully-executed POA document, as the document submitted to the UCBSS was not complete and was not signed by D.M. See R-1. There is a signed POA that was not admitted into the record in this matter; however, it appears that this document is the same document that was submitted to UCBSS with the addition of D.M.'s signature, which was not notarized or dated, and A.M.'s initials and signature, which was notarized and dated January 7, 2019.

² The Initial Decision provides that A.M.'s Social Security payments were being directed to the long-term facility where he resided; however, there is nothing contained in the documentary evidence in the record that confirms this assertion. UCBSS's December 23, 2019 denial letter provides that Petitioner was receiving \$1,655.50 per month from Social Security. J-1. However, the "Accounts Receivable Ledger" from the long-term care facility only show credits of \$1,205.45, and does not show where this money came from P-1. Additionally, if the if the credit of \$1,205.45 is part of the Petitioner's Social Security benefits, no documentation was provided showing what happened to the remaining \$450.05. P-1 at Exhibit E. There is no record of the Social Security payments in Petitioner's Charles Schwab bank account, and additionally, no other bank account statement was provided that shows

Petitioner's Charles Schwab bank account to UCBSS, and it was discovered that Petitioner was receiving two annuity deposits in the amounts of \$893.64 monthly and \$46.50 quarterly from Prudential. Ibid. These Prudential annuities were not disclosed on Petitioner's application. P-1 at Exhibit D. UCBSS, through a letter dated August 15, 2019, requested verifications related to the two Prudential annuities contained on Petitioner's bank statements. Ibid. However, Petitioner passed away prior to the August 15, 2019 letter being issued. ID at 3. Leah Bodenheimer, Ms. Gutman's supervisor, testified that the annuity information could not be obtained from Prudential because Petitioner was deceased and the POA and DAR were no longer in effect.³ Id. at 4. Through a letter dated August 26, 2019, UCBSS denied Petitioner's application for failing to provide the requested verifications. Ibid.

the Social Security deposits. See R-1.

³ I note that the DAR and POA expired on Petitioner's death. See N.J.S.A. 46:2B-8.5. See L.M. v. Division of Med. Assistance & Health Servs., Dkt. No. A-6014-17T1, 2020 N.J. Super. Unpub. LEXIS 791 (App. Div. April 30, 2020) and M.F. v. Div. of Med. Assistance & Health Servs., No. A-2254-17T2, 2019 N.J. Super. Unpub. LEXIS 733 (Super. Ct. App. Div. Apr. 1, 2019). See also E.D. v. DMAHS, HMA 05284-18, Final Decision, (September 4, 2018) and G.C. v. DMAHS, HMA 03582-19, Order on Remand, (October 24, 2019). There is no authority to permit a DAR to continue after death. The appointment of a DAR is meant to be voluntary and revocable. 42 C.F.R. § 435.923; E.B. v. Division of Med. Assistance & Health Servs., 431 N.J. Super. 183 (App. Div. 2013). Upon the death of the applicant, a key boundary placed upon such an appointment vanishes, the legal authority underlying the appointment changes, and the individual can no longer revoke the appointment. 42 C.F.R. § 435.923. The DAR designation is analogous to a limited Power of Attorney for the purposes of pursuing a Medicaid application or appeal. The attorney-in-fact is no longer permitted to act on the principal's behalf once he receives notification of the principal's death. See N.J.S.A. 46:2B-8.5. Additionally, the designation form that Petitioner signed provides that it is revocable at any time, similar to the revocability of a power of attorney. See N.J.S.A. 46:2B-8.10. This federally mandated revocability provision is rendered meaningless if the designation survives the applicant's death. Accordingly, in order for Ms. Gutman to represent Petitioner's estate once he passed, an administrator of the Petitioner's estate needed to be appointed, who could then designate Ms. Gutman as the DAR for Petitioner's state. However, an administrator of Petitioner's estate was not appointed until after a February 2020 emergency petition was filed by Cowart Dizzia LLP, on behalf of Petitioner's long-term care facility. R-1. The Order, which appointed Dorothy McCormack, Esq. as the temporary administrator for Petitioner's estate, was issued on May 28, 2020, and Ms. McCormack did not issue a new DAR form, which appointed Ms. Gutman as DAR for Petitioner's Estate, until July 20, 2020.

On or about September 17, 2019, Ms. Gutman, requested a hearing on the August 26, 2019 denial and the matter was transmitted to the OAL for hearing on October 23, 2019.⁴ ID at 2. On or about November 18, 2019, the Prudential annuity information was supplied to UCBSS; however, no action was taken because the application was previously denied. ID at 7.

A hearing took place on December 3, 2020, and at that hearing, the ALJ requested that UCBSS accept the Prudential annuity documents and reconsider the denial. Id. at 2 and 7. As a result, the record remained open. Id. at 2. On December 23, 2020, UCBSS issued a second denial letter, stating that Petitioner's income exceeded the income eligibility limits to qualify for Medicaid. Cowart Dizzia LLP, on behalf of Ms. Gutman, appealed the December 23, 2020 denial and the matter was transmitted to the OAL for a hearing on February 23, 2021. Id. at 2. The two matters were consolidated sua sponte by the ALJ on March 22, 2021. Ibid. During an April 7, 2021 telephone conference, the parties agreed that there was no need for additional testimony and requested that the ALJ issue an Initial Decision based on the record previously established during the December 3, 2020 hearing. Ibid. The record was then closed. Ibid.

As it relates to the August 26, 2019 denial, the Initial Decision found that because Petitioner had passed away and was not able to provide the requested documentation related to the Prudential annuities within the timeframe provided by UCBSS, UCBSS should have

⁴ The fair hearing request provided the original DAR that was signed by D.M. to Ms. Gutman was provided to support Ms. Gutman's authority to request the hearing on Petitioner's behalf. Ms. Gutman failed to advise that Petitioner had passed away and, as set forth above, Ms. Gutman did not have the authority to represent Petitioner's estate for a fair hearing until an administrator of Petitioner's estate was appointed and the administrator agreed to sign new DAR on behalf of Petitioner's estate. However, because DMAHS was not informed of Petitioner's passing, the matter was transmitted to the OAL for a fair hearing based upon the documents presented.

provide an extension of time to permit the appointment of an administrator of Petitioner's estate who then could have requested the documentation. I disagree. While the timeframe to determine an application may be extended when documented exceptional circumstances arise preventing the processing of the application within the prescribed time limits, no extension was requested by Ms. Gutman in this matter. N.J.A.C. 10:71-2.3(c). See also S.D. v. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013).

Significantly, the facts of the case show that neither Petitioner's death nor the lack of an estate representative was an impediment to getting the requested information. The Prudential documentation was provided to UCBSS in November 2019, three months before Cowart Dizzia, as counsel for Petitioner's long-term care facility, even filed to have an administrator appointed. R-1. Moreover, a temporary administrator was not appointed until May 28, 2020, six months after Ms. Gutman provided the verification of the Prudential annuities. Therefore, it is unclear why UCBSS would have been required to provide an extension of time that was not requested in order for Ms. Gutman or D.M. to have an administrator of Petitioner's estate appointed for the purposes of obtaining the Prudential annuity documentation when the documentation was obtained without having an administrator appointed in the first place.

Accordingly, the August 26, 2019 denial should have been upheld at the conclusion of the December 2020 hearing in this matter. The ALJ erred in keeping the record open and in requesting that UCBSS consider documentation that was received after the denial of Petitioner's application was issued. See MedCom No. 10-09 (stating, "After the denial letter is sent, no further documentation will be accepted by the Agency. The applicant or their representative will be informed that a new application must be submitted."). Thus, I

REVERSE the Initial Decision's finding that UCBSS erred in failing to provide an extension of time for Petitioner to submit the requested verifications. I, accordingly, FIND that UCBSS appropriately denied Petitioner's application on August 26, 2019 for failing to provide requested verifications that were necessary in order for UCBSS to issue a determination on Petitioner's application. However, as the ALJ did keep the record open in this matter and did request that UCBSS reconsider its August 2019 denial, which resulted in a second denial letter being issued on December 23, 2020 for excess income, I will still consider Petitioner's appeal of the December 23, 2020 denial.

The November 18, 2019 letter from Prudential advised that Petitioner received monthly pension benefits under a group annuity contract in the amount of \$893.64 per month and quarterly payments in the amount of \$46.50. R-1. Combined with his Social Security benefits of \$1,655.50,⁵ UCBSS determined that Petitioner's monthly gross income was \$2,564.64.⁶ The income limit to qualify for benefits in 2019 was \$2,313 per month. See Medicaid Communication No. 19-03. Accordingly, Petitioner's monthly income of \$2,564.64 exceeded the income limit to qualify for benefits. UCBSS's December 23, 2020 denial letter advised that Petitioner needed to open and fund a Qualified Income Trust (QIT) prior to his passing in order to have met the income eligibility requirements. J-1. As a QIT was not opened and funded prior to Petitioner's passing, the Initial Decision found that UCBSS appropriately denied Petitioner's application for excessive income. I concur with this finding.

⁵ Although there is nothing in the record that confirms Petitioner's monthly Social Security payment amount, the parties are not contesting this amount, which is set forth in UCBSS's December 23, 2020 denial letter. See R-1.

⁶ UCBSS determined that the quarterly payments of \$46.50 should be distributed into equal monthly payments of \$15.50 per month. J-1

In his exceptions, Petitioner first argues that he properly redirected his income to his long-term care facility pursuant to 42 CFR § 435.725 and N.J.A.C. 10:71-5.7. However, Petitioner appears to be confusing the pre-eligibility treatment of income with the post-eligibility treatment of income. In determining an applicant's eligibility, all income that can be used to meet the applicant's basic needs for food or shelter is counted. N.J.A.C. 71:5.1(b) (providing that "income shall be defined as receipt, by the individual, of any property or service which he or she can apply, either directly or by sale or conversion, to meet his or her basic needs for food or shelter. All income, whether in cash or in-kind, shall be considered in the determination of eligibility. . . ."). The citations provided by Petitioner relate to the post-eligibility treatment of income, i.e. what happens to income after eligibility is established. See 42 CFR § 435.725 and N.J.A.C. 10:71-5.7. In order to determine an applicant's post-eligibility income, eligibility must first be established by, among other things, comparing all of the applicant's income against the applicable income limit to qualify for benefits.

In the present matter, Petitioner's income exceeded the Medicaid cap but had a path to eligibility through a QIT. As of December 1, 2014, New Jersey received federal authority to cease covering nursing home services under Medically Needy and permit applicants, who needed institutional level of care in a nursing facility, an assisted living facility or home and had income in excess of \$2,163 (\$2,313 in 2019) to place the excess income in a QIT, also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). By executing a written trust agreement, setting up the special bank account and depositing income into the account an applicant with excess income would become income eligible for Medicaid Managed Long Term Services and Supports (MLTSS), which includes nursing facilities. Medicaid Communication 14-15. Simply put, when an individual's monthly income is placed in a QIT federal law permits that income to be excluded when determining financial

eligibility for Medicaid. As QIT was not set up, Petitioner was correctly deemed ineligible based upon his monthly income. Petitioner's arguments concerning the post-eligibility treatment of Petitioner's income, pursuant to 42 CFR § 435.725 and N.J.A.C. 10:71-5.7 are misplaced.

Petitioner additionally argues that his Social Security income was not available to him, pursuant to N.J.A.C. 10:71-5.1(b)1i, and therefore, should be excluded from his income calculation. Petitioner argues that the designation of his Social Security payments to the long-term care facility is tantamount to a QIT being created. This argument is unfounded. It is unclear from the record how the Social Security funds arrived at Petitioner's long-term care facility, as D.M., who handled Petitioner's finances, testified that she was unaware that his Social Security money was being paid directly to the long-term care facility. ID at 4. However, based upon the fact that Petitioner's Social Security payments were not deposited into his Charles Schwab bank account and D.M. was unaware that the payments were being directed to the long-term care facility, it may be assumed that the long-term care facility was designated as Petitioner's Representative Payee under Social Security's Representative Payment Program, which provides benefit payment management for beneficiaries who are incapable of managing their Social Security payments. 42 U.S.C.A. § 1383 and <https://www.ssa.gov/payee/> (last visited on August 4, 2021). Accordingly, the Social Security payments that are distributed to a representative payee are designated for the individual beneficiary, who in this case is Petitioner, and the funds therein belonged to Petitioner until they were disbursed to pay for Petitioner's care. The fact that Petitioner's long-term care facility was paid by Petitioner using the Social Security funds does not result in that income being excluded in the income calculation for eligibility purposes as it would if it had been placed in a QIT nor does it mean that the Social Security money was

unavailable to Petitioner when it was received. Accordingly, UCBSS appropriately included Petitioner's monthly Social Security in his income calculation.

Lastly, Petitioner argues that because his representatives were unaware of the Prudential annuity payments and Petitioner passed away, there was no way to establish a QIT. As discussed by the ALJ, this argument is unpersuasive. The Charles Schwab bank account statements, which were available to both Ms. Gutman and D.M. prior to Petitioner's death, clearly set forth the notation "PRU ANNTY PYMT." R-1. Additionally, D.M. testified that she paid Petitioner's bills. ID at 4. The only income deposits on the bank statements provided are these Prudential annuity payments, and Petitioner's bills, such his wireless telephone bill, were paid through this same account. R-1. Accordingly, both D.M. and Ms. Gutman should have been aware of these payments.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I ADOPT the Initial Decision's finding that UCBSS's December 23, 2020 denial of Petitioner's application for excess income be affirmed, as UCBSS properly denied Petitioner's application.

THEREFORE, it is on this 10th day of AUGUST 2021,

ORDERED:

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



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