

Camden County Board of Social Services (CCBSS). P-2 and R-1. On January 17, 2020, CCBSS sent a letter to Petitioner's attorney, Timothy J. Rice, Esq.,¹ which requested verification of certain information that was necessary to process the application, including documentation related to a life insurance policy, proof of ownership of a bank account into which a transfer was made, and proof of a pension deposit from April 2015. P-3 and R-2. The requested verifications were due on February 4, 2020. Ibid. By letter dated January 24, 2020, Mr. Rice advised the CCBSS caseworker assigned to Petitioner's application that her January 17, 2020 verification letter was received by his office on January 23, 2020 and requested a three week extension of time to provide the documentation requested. P-4 and R-3. Mr. Rice explained that the extension was needed in order to "communicate with [Petitioner]'s financial Power of Attorney and perhaps financial institutions as may be necessary to gather all the information necessary in order to respond to your request." P-4. The letter was received by CCBSS on January 29, 2020. R-3. On or about January 30, 2020, the CCBSS caseworker contacted Mr. Rice's office and denied the request for an extension of time, advising that "if all requested documents are not received by the expiration of the first notice, a denial notice will be mailed providing an additional 10 days to provide the requested documentation and verification."² R-9. By letter dated February 4, 2020, Mr. Rice provided most of the requested documentation set forth in the January 17, 2020 letter. P-5. Mr. Rice's letter and enclosed documents were received by CCBSS on February 7, 2020. R-6. However, the day prior, on February 6, 2020, CCBSS issued a prospective denial letter that requested all of the same documentation requested in the January 17, 2020 letter and

¹ Mr. Rice did not represent Petitioner at the hearing in this matter; however, another attorney at Mr. Rice's law practice, Kimberlee Fiero, Esq., represented Petitioner at the hearing. Ms. Fiero additionally appears to have provided testimony on Petitioner's behalf. ID at 4-5. However, I note that an attorney for a litigant is precluded from being a witness in the same matter in which she represents the litigant. RPC 3.7.

² Ms. Fiero testified that there was no response from CCBSS in relation to the extension request; however she later learned that the request was denied. ID at 4.

additionally, advised that if the documentation was not received by February 18, 2020, Petitioner's application would be denied.³ R-4. On February 10, 2020, Mr. Rice sent additional documentation to CCBSS that Mr. Rice believed were still outstanding. P-7. Some additional documentation was sent by Mr. Rice to CCBSS after the February 18, 2020 deadline set forth in CCBSS's February 6, 2020 letter. P-8. CCBSS deemed the submissions as insufficient and Petitioner's application was denied effective February 18, 2020, pursuant to the February 6, 2020 prospective denial letter.

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 circumstances. N.J.A.C. 10:71-2.2(e). The CWA exercises direct responsibility in the application process to inform applicants about the process, eligibility requirements, and their right to a fair hearing; receive applications; assist applicants in exploring their eligibility; make known the appropriate resources and services; assure the prompt accurate submission of data; and promptly notify applicants of eligibility or ineligibility. N.J.A.C. 10:71-2.2(c) and (d). CWAs must determine eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days N.J.A.C. 10:71-2.3(a) and 42 CFR § 435.912. The timeframe may be extended when documented exceptional circumstances arise preventing the processing of the application within the prescribed time limits. N.J.A.C. 10:71-2.3(c). The regulations do not require that the CWA grant an extension beyond the designated time period when the delay is due to

³ I note that Ms. Fiero testified that the February 6, 2020 letter mirrored the first letter and did not clarify what was received, what was missing, and what else needed to be provided. ID at 4. However, the documentation that Mr. Rice submitted to CCBSS was mailed on February 4, 2020, the deadline for submission, and CCBSS did not receive the documentation until February 7, 2020, the day after the final letter was issued. See R-6. As the documentation submitted by Mr. Rice and the final letter issued by CCBSS crossed in the mail, CCBSS could not have updated the list of verifications in the final letter based on the documentation submitted by Mr. Rice, as it did not have the documentation submitted by Mr. Rice at the time that it issued the final letter.

circumstances outside the control of both the applicant and the CWA. At best, an extension is permissible. N.J.A.C. 10:71-2.3; S.D. v. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013).

The Initial Decision reversed the denial on the basis that Petitioner had difficulty obtaining the documents due to the COVID-19 pandemic and found that Petitioner is eligible for receipt of Medicaid benefits from May 1, 2019 through December 31, 2019. For the reasons that follow, I hereby REVERSE the Initial Decision.

At the outset, I disagree with the findings of the Administrative Law Judge (ALJ) that Petitioner's failure to provide the requested documentation in the timeframe set forth by CCBSS was excused as a result of the public health emergency (PHE) caused by the COVID-19 pandemic. The ALJ asserted that Petitioner was not given sufficient time to obtain and submit the documentations requested because while businesses were still open, they were "operating with staggered and reduced staffing and response times to research requests were unpredictable" and [m]any businesses still have voice messages imploring the public for patience because they are not operating at full capacity due to the pandemic. . . ." ID at 10-11. However, in this matter, the first verification letter was issued on January 17, 2020 and the denial was effective February 18, 2020. The PHE in this State was not initially issued until March 9, 2020, residents were not advised to begin using aggressive social distancing measures in an effort to mitigate the spread of COVID-19 until March 16, 2020, and residents were not directed to stay at home until March 21, 2020. See Exec. Order No. 103 (March 9, 2020), 52 N.J.R. 549(a) (April 6, 2020); Exec. Order No. 104 (March 16, 2020), 52 N.J.R. 550(a) (April 6, 2020); and Exec. Order No. 107 (March 21, 2020), 52 N.J.R. 554(a) (April 6, 2020). Indeed, there is nothing in the record that shows that the companies that Mr. Rice needed to contact in order to obtain the documentation were understaffed or unable to provide the documentation for any reason related to COVID-19, especially when the requests would have taken place in the months prior to the PHE being enacted. Accordingly,

Petitioner's failure to obtain and submit the requested documentation cannot be excused for issues related to the PHE and COVID-19 when Petitioner's failure to provide the documents occurred prior to the PHE being instituted. Thus, I REJECT all of the findings made in the Initial Decision that relate to Petitioner's failure to provide the requested documentations being excusable as a result of the PHE and COVID-19.

Additionally, in support the conclusion that the reversal was warranted, the Initial Decision referenced the matter of R.B. v. Burlington Board of Social Services, OAL DKT. NO. HMA 04295-2016 and HMA 14375-2016; Initial Decision (April 27, 2017); Final Agency Decision (June 13, 2017). However, only the Initial Decision, and not the Final Agency Decision, in that matter was referenced. The Final Agency Decision in R.B. reversed the ALJ's finding that exceptional circumstances were demonstrated by the hospitalization of the Petitioner's wife for a period of roughly two months. Specifically, the Final Agency Decision held that "[b]ased upon the totality of the circumstances, including the facts that Petitioner was represented by counsel for the entirety of the application process, I do not agree that there are exceptional circumstances pursuant to N.J.A.C. 10:71-2.3(c), and on this point, I REVERSE the Initial Decision." Id. at 3. As a result, the Initial Decision's argument that the Initial Decision in R.B. warrants a finding that exceptional circumstances be found in this matter is unwarranted. Based upon R.B., the fact that Petitioner was represented by counsel and had a POA for the entirety of the process, actually leads to a conclusion that exceptional circumstances do not exist in this matter and that CCBSS's denial of Petitioner's application be upheld.

While, I concur with the ALJ's assessment that Petitioner, through his counsel, was cooperating with CCBSS and provided most of the documentation requested, some documentation that was requested in both the January 17, 2020 and February 6, 2020 letters were not received prior to the prospective denial date of February 18, 2020. Specifically, Mr. Rice, on behalf of the Petitioner failed to provide "verification, from the life insurance policy,

of the Face and current Cash Surrender Value of the life insurance policy, including the name of the life insurance company and owner & insured for the police;” “proof of ownership for account # . . . , per a transfer posted on 5/3/14;” and “provide proof of the source of the Pension deposit to [credit union account] on 4/30/2015.” Petitioner, through his representatives, have failed to show why this documentation could not have been requested and received in the timeframe set forth by CCBSS.

In the present matter, while the requested three week extension requested by Petitioner was denied, CCBSS did ultimately provide an extension to Petitioner. Specifically, the January 17, 2020 letter set forth a deadline of February 4, 2020 to provide the requested documentation. CCBSS did not receive any documentation from Petitioner or anyone acting on his behalf at that time. Instead of denying Petitioner’s application at that time for failing to provide the requested documentation, CCBSS sent a final letter, dated February 6, 2020, that requested the documentation again and provided a deadline of February 18, 2020 to provide the documentation. I note that when CCBSS denied Mr. Rice’s January 24, 2020 extension request, CCBSS additionally advised Mr. Rice’s law firm that it was its practice to send a prospective denial letter, which gives an additional ten days to provide the documentation if the requested documentation was not received by the date set forth in the initial verification letter. See R-9. Based upon the dates contained in both letters, CCBSS actually provided an additional fourteen days to provide documentation in this matter.

Additionally, Mr. Rice, as an Estate and Elder Law attorney, should be aware of what documentation is necessary to comply with the requests set forth by CCBSS. The record reflects that Mr. Rice did not submit some of the documentation that was requested and other documentation that he did provide was deficient and did not fully respond to the verifications sought by CCBSS. For example, Mr. Rice submitted a bank statement that showed the additional pension payment deposit, the statement alone does not “provide proof of the source of the pension deposit” as set forth in the January 17, 2020 and February 6, 2020

letters, as the payment was higher than what was submitted as Petitioner's standard pension payment. P-5. Further, while Mr. Rice did provide an endorsement from the life insurance company with the application, it was dated June 26, 2015, four years before the application in this matter was filed, and failed to show the information requested by CCBSS, including the name of the policy holder. Ibid. Through both the January 17, 2020 and February 6, 2020 letters, Mr. Rice was made aware that the endorsement provided with the application was insufficient and was asked to provide an updated document that contained the information that CCBSS deemed was necessary to process Petitioner's Application. R-2 and R-4 (providing "A document for a Life Insurance policy # . . . was provided; however, it is insufficient. Provide verification, from the life insurance company of the Face and current Cash Surrender Value of the life insurance policy, including the name of the life insurance company, and owner & insured for the policy."). Ibid.

Additionally, it does not appear that any documentation related to the unknown bank account was provided prior to the February 18, 2020 denial date. Petitioner's POA testified that he had asked family members about the transfer because Petitioner suffered from dementia and could not assist him in discovering who owned the account. ID at 6. The POA stated that it was discovered that Petitioner's granddaughter owned the account at issue. Ibid. However, this information was discovered prior to Mr. Rice submitting the first packet of documentation to CCBSS as the granddaughter is identified in his February 4, 2020 letter. See P-5. It is unclear why the POA was unable to obtain a copy of the bank statement from the granddaughter to show that it was her account in the time allotted and only submitted to CCBSS after the February 18, 2020 denial date.

Moreover, it appears that that attempts to obtain the life insurance information were only made after the date of the denial. One of the documents submitted by Mr. Rice after the February 18, 2020 denial, was a letter from the life insurance company, which was dated February 27, 2020, and advised that the letter was in response to a February 27, 2020

telephone call with Petitioner's POA. P-8. Even still, the letter does not set forth all of the information that was requested by CCBSS. It is unclear from the record, why Petitioner's representatives could not have obtained the life insurance information that CCBSS requested within the timeframe provided when a telephone call to the life insurance company resulted in a letter being issued on the same day that the telephone call was made. Similarly, while it is unclear when Petitioner's representatives requested information related to the pension deposit at issue, a letter from the Board of Pensions and Retirement, which states that disbursements from the Pension Adjustment Fund gave pensioners one-time bonus payments, is not dated until March 11, 2020.⁴ Ibid. Additionally, I note that it is unclear from the record when these documentations were submitted to CCBSS; however, it does appear that these documents, including the granddaughter's bank statement, were submitted after the February 18, 2020 denial date.

Accordingly, and based upon the documentation and facts presented in this matter, I FIND that the Initial Decision in this matter be REVERSED as Petitioner's May 23, 2019 application was appropriately denied for failing to provide verifications that were necessary to determine eligibility. While I do not deny that significant effort was undertaken by Petitioner's representatives in this matter, I cannot ignore the fact that certain verification requests were not acted upon in a timely matter and, as fully discussed above, the delays in providing the requested documentation cannot be attributable to the COVID-19 pandemic, as the verifications were requested and due prior to the PHE. To that end, Petitioner's representatives have failed to provide any documentation or discern of any other reason why

⁴ The March 11, 2020 letter from the Board of Pensions and Retirement provided by Petitioner states that the one-time bonus disbursements from the Pension Adjustment Fund were provided on April 30, 2015, April 29, 2016, and April 28, 2017. R-8. The amount listed for April 2015, was \$1,965. Ibid. Petitioner's standard monthly pension amount set forth in the same letter was \$2,478.12. Ibid. These combined amounts exceed the amount deposited into Petitioner's bank account on April 30, 2015, which was \$3,288.75. R-4. While Federal Income Taxes may have reduced this total amount, it does not appear that Petitioner or his representatives provided documentation to CCBSS accounting for this discrepancy.

the timeframes set forth by CCBSS to provide the requested documentation were inadequate. Thus, no exceptional circumstances existed in this matter that would have necessitated additional extensions of time to provide the requested documentation.

THEREFORE, it is on this 15th day of JUNE 2021,

ORDERED:

That the Initial Decision is hereby REVERSED.



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