



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

G.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MONMOUTH COUNTY DIVISION
OF SOCIAL SERVICES,
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10280-2020

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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 26, 2021 in accordance with an Order of Extension.

This matter arises from the October 2020 denial of Petitioner's second Medicaid application due to his failure to provide information that was necessary to determine eligibility. Petitioner received two letters requesting information to process the application and had a

Designated Authorized Representative (DAR), Breindy Bernstein of Future Care Consultants, to assist him in the process. Nevertheless, Petitioner failed to provide the documentation requested, including his pension benefits statement and a full and complete copy of Petitioner's personal needs allowance (PNA) from the facility where Petitioner resides. Accordingly, Petitioner's second application was then denied. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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); MedCom No. 10-09; and 42 CFR § 435.912. The time frame 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 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).

As found by the ALJ, the record reflects that in June 2020, Petitioner's DAR filed a second Medicaid application on his behalf.¹ ID at 2. On or about September 4, 2020, the Monmouth County Division of Social Services (MCDSS) set an initial request for verification of certain information that was necessary to determine eligibility, including, but not limited to, the production of Petitioner's pension benefits statement. R-4. The September 4, 2020 verification letter gave a deadline of September 21, 2020² to provide the requested documentation. Ibid. On September 16, 2020, Petitioner's DAR provided some of the verifications requested in the September 4, 2020 verification letter and additionally advised that the pension benefits statement was still outstanding. P-3. The DAR advised that the pension company was served with a subpoena to supply the requested information, and additionally, requested an extension of time to provide the verification.³ P-3. However, it was not until September 17, 2020 that Michael Heinemann, Esq., on behalf of Petitioner,⁴ issued an OAL subpoena to the administrator of Petitioner's pension account, which directed the production of Petitioner's 2019 and 2020 pension verification statements. P-1. On September 23, 2020 MCDSS sent a second verification letter to the DAR, again requesting the Petitioner's pension benefits statement and a full and complete copy of Petitioner's PNA from the facility where he resides for the months of June 2020 to the present. R-4. The September 23, 2020 verification letter provided a deadline of October 7, 2020 to respond.

¹ Petitioner's first Medicaid application, filed in December 2019, was denied on June 12, 2020 for failing to provide requested verifications that were necessary to determine eligibility.

² The Initial Decision provides that the verifications were due by September 21, 2000. This appears to be a typographical error as the September 4, 2020 letter provided that that the due date was September 21, 2020. R-4.

³ MCDSS worker, Ashley Daniels, testified that MCDSS did not receive a copy of DAR's September 16, 2020 extension request.

⁴ In two letters, both dated December 21, 2020, Michael Heinemann, Esq., entered his appearance and advised the OAL that he represented Petitioner in the hearing regarding this denial as well as the prior denial.

Ibid. On October 7, 2020, MCDSS received a request from the DAR for an extension of time, as the pensions benefit statement remained outstanding. ID at 3. The extension request was denied on October 8, 2020, and on the same date, MCDSS issued a denial of Petitioner's second Medicaid application for "fail[ing] to supply corroborating evidence necessary to determine eligibility as requested in the letters sent 9/4/2020 and 9/23/2020." ID at 3 and R-2.

This is Petitioner's second application for Medicaid benefits. Petitioner's first application for Medicaid benefits was also denied for failing to provide requested verifications, which included Petitioner's pension benefit statement. ID at 4. Accordingly, Petitioner's DAR was aware since January 29, 2020, when MCDSS issued the first verification letter on Petitioner's first Medicaid application, that MCDSS required Petitioner's pension benefits statement in order to determine eligibility. Ibid. Therefore, in addition to the two verification letters issued by MCDSS in the present matter, Petitioner's DAR had a total of approximately 253 days, between the first verification letter on Petitioner's original application, dated January 29, 2020, and the denial of the present application on October 8, 2020, to obtain the requested documentation.

At the hearing in this matter, Petitioner's DAR testified that she was unable to timely obtain the pension verification letter because the pension company insisted on speaking with Petitioner and would not respond to letters or an affidavit on his behalf. ID at 4. The DAR stated that a subpoena needed to be issued for the pension information, which ultimately resulted in the DAR obtaining the requested documentation through a letter dated November 12, 2020. ID at 4 and P-2. The DAR testified that "[t]he plan was to issue a subpoena for the pensions information once the fair hearing had been requested and a docket number was assigned to the matter."⁵ ID at 4. However, the filing for a fair hearing in the OAL should not

⁵ Pursuant to N.J.A.C. 1:1-11.1(b), a subpoena may be issued when there is a matter before the OAL and must contain the title and docket number of the matter. While the appeal of the denial of Petitioner's first Medicaid application was filed with the OAL at the beginning of

be used as a fact-finding mission by the parties or as an instrument to obtain information requested by the CWA, especially when other avenues to obtain the verifications are available. Specifically, in the present matter, the DAR, through her own admission, would have been able to obtain the requested documentation by having Petitioner speak to the pension company directly. There is nothing in the record to show that Petitioner was unable to speak to the pension company on the telephone or a reason as to why this was not a feasible option. Moreover, the DAR failed to supply any evidence showing her prior attempts to obtain the requested documentation.

The ALJ also noted that the DAR appeared to be unaware of MCDSS's request for a complete copy of Petitioner's PNA from the facility where he resides in the September 23, 2020 verification letter. Id. at 6. The ALJ stated the only explanation that the DAR provided for failing to supply Petitioner's PNA was that the verification request was confusing. ID at 6. Pursuant to N.J.A.C. 8:85-1.16(f), the nursing facility accepts fiduciary responsibilities for a Medicaid beneficiary's PNA if the PNA is being managed by the facility. The OAL case file in this matter contains a letter from Petitioner's DAR to MCDSS that was written on the letterhead of the Petitioner's nursing facility. The letterhead listed the address for Future Care Consultants, the employer of Petitioner's DAR, as the address for the nursing facility, showing a relationship between the two entities. Moreover, Future Care Consultants has been identified in other matters related to the filing of Medicaid applications as the fiscal or financial agent for nursing homes and assisted living facilities. See E.T. v. Division of Medical Assistance and Health Services, A-0403-16T4 (App. Div. November 20, 2017) (stating, "Future Care Consultants, the financial agent for multiple nursing facilities in New Jersey."); See also B.L. v. Division of Medical Assistance and Health Services, A-3997-16T3 (App. Div. August 16, 2018); and A.S. v. Division of Medical Assistance and Health Services, A-0276-

September 2020, the subpoena issued by Michael Heinemann, Esq. was provided in response to the second application and failed to comply with these requirements as it was issued stating docket number was "pending." P-1.

15T1 (App. Div. April 10, 2018). Accordingly, the request by a CWA for the PNA account information should be a familiar request to both Future Care Consultants and the nursing facility where Petitioner resides. Thus, there is nothing in the record to support a finding that this verification request was unfeasible or any supported reason as to why it was never provided to MCDSS.

Accordingly, the Petitioner's DAR failed to provide the requested documentation within the timeframe set by MCDSS in both the September 4, 2020 and September 23, 2020 verification letters and failed to supply any exceptional circumstances that would have warranted Monmouth County consider any additional extensions of time to provide the requested verifications. Thus, I FIND that MCDSS appropriately denied Petitioner's application and as the record supports this finding, the Initial Decision correctly upheld the denial.

THEREFORE, it is on this 25th day of APRIL 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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