



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

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 08217-2020

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 19, 2021 in accordance with an Order of Extension.

This matter arises from the June 2020 denial of Petitioner’s 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 verification of his prior addresses and his gross pension benefits statement, and the application was 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. The 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 December 2019, Petitioner's DAR filed a Medicaid application on his behalf. ID at 2. On or about January 29, 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

verification of current and prior residences and the Petitioner's gross pension benefits statement. R-4. The January 29, 2020 verification letter gave a deadline of March 1, 2020¹ to provide the requested documentation. Ibid. On March 13, 2020, the DAR provided some documentation and additionally, requested an extension to provide documentation related to Petitioner's former addresses and his pension. P-1. On May 12, 2020, MCDSS sent a second verification letter to the DAR, requesting the same information set forth in the January 29, 2020 verification letter and set forth a due date of May 22, 2020. R-4. Having received no response from the DAR related to the verifications requested, MCDSS denied Petitioner's Medicaid application through a letter dated June 12, 2020 and advised that the denial was based upon the "failure to supply corroborating evidence necessary to determine eligibility as requested in the letters set 1/29/2020 and 5/12/2020". R-2.

MCDSS provided a considerable amount of time for Petitioner's DAR to provide the requested verifications. Specifically, Petitioner's DAR had 135 days from the date of the first verification letter on January 20, 2020 until MCDSS issued the denial of Petitioner's application on June 12, 2020. Additionally, MCDSS provided two separate notices, dated January 20, 2020 and May 12, 2020, respectively, which requested the same verification documentation. Except for one letter, dated March 13, 2020, which requested additional time to submit the documentation MCDSS advised was necessary to determine eligibility, Petitioner's DAR failed to request any additional extensions or provide MCDSS with the efforts made to obtain the verifications that would necessitate any further extensions of time.

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 3. The DAR

¹ The Initial Decision provides that the verifications were due by February 28, 2000. The January 29, 2020 letter specifically provided that that the due date was March 1, 2020. R-4. I note that March 1, 2020 was a Sunday and not a business day. Regardless, no documents were provided by either the Friday before or Monday after March 1, 2020.

stated that a subpoena needed to be issued for the pension information.² Ibid. Pursuant to N.J.A.C. 1:1-15.5(b), the residuum rule, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." However, there is nothing in the record to reflect that the pension company refused to comply with the DAR's requests, and Petitioner's DAR has not provided any evidence of her attempts to obtain the requested documentation. Further, through her own admission, the DAR would have been able to obtain the requested documentation by having Petitioner speak to the pension company directly. There is nothing in evidence to show that Petitioner was unable to speak to the pension company on the telephone. Additionally, there is nothing in the record to show that the DAR advised MCDSS that the pension company would not provide the requested documentation to the DAR. In fact, the ALJ provided that Petitioner's DAR "did not advise the MCDSS of the specific problems she was having in obtaining the pension verification needed[, and s]he did not request assistance from the MCDSS." ID at 3. Moreover, there is nothing in the record to reflect the attempts by the DAR to obtain any of the other information requested, such as verification of Petitioner's previous residences, aside from the DAR's March 13, 2020 letter to MCDSS. It is unclear if documentation related to Petitioner's previous address was ever provided to MCDSS by the DAR. As such, there were no exceptional circumstances that would have necessitated any additional extensions of time, above the extensions that were previously granted, to provide the requested verifications, and the DAR failed to provide the requested documentation

² Pursuant to N.J.A.C. 1:1-11.1(a), a subpoena may be issued in the name of the Clerk to compel a person to produce papers, documents, or electronically stored information in a matter before the OAL. The subpoena must contain the title and docket number of the case. N.J.A.C. 11:1-11.1(b). In the present matter, when the verification documentation was requested by MCDSS, there was no pending matter before the OAL, as the present matter was transferred to the OAL for a fair hearing on September 2, 2020, and a subpoena could not be issued by Petitioner for the information requested. Nevertheless, it is necessary to note that the filing for a fair hearing in the OAL should not be used as a fact-finding mission or as an instrument to obtain the information requested by the CWA to determine eligibility, especially when other avenues, such as, in this case, having the Petitioner speak directly to the pension company, are available to obtain the requested documentation.

during the 135 days between the first verification letter and the issuance of the denial letter. Accordingly, 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 16th day of APRIL 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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