

appealed on February 25, 2020 by Petitioner's Designated Authorized Representative (DAR),¹ Jannell Thomas, an employee of Petitioner's nursing facility. Prior to the scheduled hearing in this matter, Petitioner passed away. ID at 2. Counsel for Ms. Thomas requested several adjournments in order to open an estate; however, it is unclear whether an estate had been opened and if so, the identity of the administrator of the estate. Ibid. On June 24, 2021, the Atlantic County Department of Family and Community Development (Atlantic County) filed a Motion to Dismiss the present matter, as neither Ms. Thomas nor her counsel maintained standing to proceed in representing Petitioner's estate after his passing. Ibid. The Administrative Law Judge (ALJ) held the record open for thirty days to allow Ms. Thomas, through her counsel, to file opposition to Atlantic County's Motion or to notify the ALJ that an estate had been opened. Id. at 2-3. However, no opposition or notification regarding the estate had been received. Id. at 3.

The Initial Decision dismissed the Petitioner's appeal as Ms. Thomas did not have standing to pursue the appeal on behalf of Petitioner once he passed away. The Initial Decision makes no substantive determination related to the underlying issue of Petitioner's Medicaid denial for excess resources, and exclusively focuses on the issue of standing, as it appropriately overrides any discussion related to the denial of Petitioner's Medicaid application. Accordingly, the issue before me solely relates to whether Ms. Thomas had the legal authority to continue representing Petitioner at the fair hearing in this matter after Petitioner passed away and before an estate was established.

Upon Petitioner's death, the POA's authorization to grant the DAR to Ms. Thomas ceased. 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.

¹ The DAR designation in this matter was granted by Petitioner's power of attorney (POA) in May 2019.

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(c) (providing that “[t]he power to act as an authorized representative is valid until . . . there is a change in the legal authority upon which the individual or organization’s authority was based.”).

The DAR designation is analogous to a limited POA 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’s POA signed provides that it is revocable at any time, similar to the revocability of a POA. 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.

In the present matter, there is nothing in the record to support a finding that an estate had been opened and that the administrator of that estate granted Ms. Thomas, or any other individual, including Ms. Thomas’s counsel, the authority to act on its behalf. Because Petitioner’s death terminated the previously-granted authority to act on his behalf, a new designation that was issued by the estate was necessary for Ms. Thomas, or any other individual, to represent Petitioner during the fair hearing in this matter.

Accordingly, I FIND that the DAR designation ended upon Petitioner’s death, and nothing in the record shows that a new authorization from Petitioner’s estate to continue the

appeal has been provided. Thus, I FIND that the Initial Decision correctly dismissed the appeal.

THEREFORE, it is on this ^{19th} day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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