



State of New Jersey

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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

J.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MIDDLESEX COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08206-2020

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. The Middlesex County Board of Social Services (MCBSS) filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 29, 2021 in accordance with an Order of Extension.

This matter arises from the August 21, 2020 denial of Petitioner's Medicaid application due to her failure to provide information that was necessary to determine eligibility. A Medicaid application with MCBSS was filed on Petitioner's behalf by her Designated

Authorized Representative (DAR), Briandy Bernstein of Future Care Consultants, on May 6, 2020. R-A. At the time of the application, Petitioner resided in a nursing facility and was married to E.L., who suffers from dementia and resides in a Veterans Administration home. Ibid.

On May 8, 2020, MCBSS sent an initial letter to Petitioner's DAR, which requested verifications of various information related to Petitioner, including a current statement detailing gross/net benefits and deductions; checking account statements for all accounts held in Petitioner and E.L.'s names and verification of all deposits and withdrawals, including Amboy National Bank statements from May 2015 through May 2020; savings account statements for all accounts held in Petitioner and E.L.'s names and verification of all deposits and withdrawals; and face and current cash surrender value of all life insurance policies from insurance companies. R-D. The May 8, 2020 letter provided that if the requested verifications were not received by May 28, 2020, Petitioner's application would be denied. Ibid.

On May 29, 2020, MCBSS sent an additional verification letter to Petitioner's DAR that requested the same information and advised that the application would be denied if the requested verifications were not received by June 8, 2020. Ibid. On June 4, 2020, Petitioner's DAR provided some of the requested documents to MCBSS; however, she advised that although she requested copies of the transactions above \$1,000 from the bank, she had not received them. R-C. Petitioner's DAR requested an extension of time to produce the records. Ibid. On June 23, 2020, the DAR emailed MCBSS to forward bank statements from two accounts and advised that for a bank account belonging to E.L., she was

trying to work with the bank to get them to release the statements. The account is only in [E.L.]'s name so they are not releasing the statements to [Petitioner]. I am trying to see if there is any other way to get it and I will let you know but I may need your assistance in contracting the bank directly because they may only agree to release the information on that account to Medicaid directly. Is that something you can help me with?

P-1. As a result, MCBSS extended the deadline to provide the requested verifications to July 30, 2020. ID at 4.

MCBSS prepared and mailed a subpoena,¹ dated June 30, 2020, to Amboy National Bank, requesting “copies of detailed monthly statements for account . . . but not limited to this account showing all transactions and balances for the following time period for the above-named individual: December 1, 2019 through May 31, 2020.”² R-C. E.L.’s name was the individual listed on the subpoena, which was returnable on July 30, 2020. Ibid. On August 6, 2020, the DAR emailed MCBSS, inquiring about the status of the subpoenaed documents. R-C. MCBSS replied on August 7, 2020 and advised that Amboy National Bank had not responded to the subpoena. Ibid. After the fair hearing in this matter, it was determined that the subpoena that was issued was never successfully served on the bank. ID at 5. USPS tracking data showed that the subpoena was sent to a USPS facility on July 1, 2020 and was sent out for delivery on July 3, 2020. R-E. Delivery attempts were made twice on July 11, 2020 and once on July 14, 2020. Ibid. As a result of the subpoena not being served on Amboy National Bank, the bank did not send the requested documents to MCBSS. ID at 4. The DAR additionally failed to provide the requested documents to MCBSS, and MCBSS denied Petitioner’s application, effective August 21, 2020. R-B. The letter stated that the denial was based on Petitioner’s failure to provide Amboy National Bank account . . . statements detailing transactions and balances from May 1, 2015 through May 1, 2020” and “statement detailing transactions and balances from May 1, 2015 through May 1, 2020, for all other resources owned by” E.L. Ibid.

¹ I note that pursuant to N.J.S.A. 44:7-20, the county director of welfare has the power to compel the attendance of an applicant and other person in the State and the production of books, records, and other documents that are deemed pertinent. However, it is unclear whether such authority also extends to applications filed with Medicaid.

² The dates contained on the subpoena, thus, did not match the statement dates that it requested from Petitioner, which were May 1, 2015 through May 1, 2020.

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 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, 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).

The Initial Decision found that the denial of Petitioner's application was improper because additional extensions of time to obtain the requested documentation from the Amboy National Bank were warranted in this matter and MCBSS failed to enforce the subpoena that it issued. Specifically, the Initial Decision found that the requested records were inaccessible to Petitioner, MCBSS was aware of the issues that the DAR faced in her attempts to obtain the documentation, MCBSS failed to effectuate service of and enforce the subpoena that it issued on the bank, and MCBSS failed to communicate with the DAR regarding the status of the subpoena, estopping the DAR "from stepping in where [MCBSS]'s effort failed." ID at 12. I disagree.

As noted above, it was the Petitioner's responsibility to obtain and submit the documentation that MCBSS deemed necessary to process her application. See N.J.A.C. 10:71-2.2(e). Although MCBSS attempted to assist Petitioner in obtaining the documentation, through the issuance of the subpoena, Petitioner's responsibility to provide the documentation was not alleviated by MCBSS's courtesy in this matter. Petitioner has failed to supply any documentary evidence showing what attempts were made to obtain the requested documentation from the bank, and solely relies on the DAR's testimony, which mainly consists of hearsay statements regarding what she was allegedly told by Amboy National Bank. I note that while hearsay evidence shall be admissible during contested cases before the OAL, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). The finding of fact cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972).

In the present matter, the DAR testified that Amboy National Bank would not provide her with the requested account statements because Petitioner's name was not on the account and E.L. could not be enlisted to obtain the records because he was incapacitated. ID at 6. However, the DAR failed to explain why Petitioner, who allegedly held an active power of attorney (POA)³ for her husband and maintained her own personal bank account with Amboy National Bank could not obtain or assist in obtaining the requested documentation. In fact, while the DAR testifies that she enlisted Petitioner's daughter in her attempts to obtain the requested documentation, the DAR makes no reference to Petitioner making attempts to contact the bank directly nor does she give any indication that Petitioner was unable to contact the bank on her own behalf. Moreover, while the DAR alleges that

³ I note that the POA document was not entered into the record in this matter. Accordingly, it is unclear when the POA was entered into and whether it was active at the time that the documents were requested.

Amboy National Bank would not accept the POA document that was on file because of its age, nothing has been submitted from the bank that supports this contention or explains why a bank would not acknowledge a POA document that it already had on file for E.L.

Additionally, the DAR alleged that she continued in her attempts to obtain the requested documentation after MCBSS issued its subpoena, but again, failed to provide any documentation or explain what attempts she actually made to do so. Indeed, the DAR testified that if she were aware that MCBSS would be denying Petitioner's application, she would have "enlisted her company's legal department to attempt to obtain the records." ID at 6. Yet, the DAR failed to explain why this avenue, or any of the other avenues set forth above, were not attempted prior to her dependence on MCBSS's subpoena or prior to the denial of Petitioner's application.

When the DAR advised MCBSS that it was having difficulty obtaining the requested documentation, MCBSS extended the previously-issued deadline of June 8, 2020 to July 30, 2020, providing Petitioner with an additional fifty-two days to submit the documentation. However, MCBSS did not deny Petitioner's application until August 21, 2020. Thus, in total, MCBSS provided Petitioner with 105 days between the issuance of the May 8, 2020 verification letter and the denial of Petitioner application, to obtain and provide the requested documentation. As noted in MCBSS's exceptions to the Initial Decision, Petitioner has still not, to date, obtained and submitted the requested documentation to MCBSS. It is, therefore, unclear how additional extensions of time would have resulted in a different outcome in this matter.

I additionally note that the Amboy National Bank account statements at issue were not the only outstanding verifications due at the time of the denial. Specifically, the August 21, 2020 denial notes that "[s]tatements detailing transactions & balances from 5/1/2015 through 5/1/2020 for all other resources owned by [E.L.]" were also not provided by Petitioner. R-B

(emphasis added). The DAR makes no reference in her testimony to any other assets owned by E.L. and her attempt to obtain verifications related to same.

In a letter dated September 14, 2021, MCBSS takes exception to the Initial Decision's apparent determination that Petitioner's Medicaid application should be approved, as MCBSS still does not have the Amboy National Bank statements and thus, cannot determine Petitioner's eligibility. Accordingly, MCBSS requested that the Initial Decision be reversed and the matter returned to MCBSS to make a determination related to Petitioner's eligibility. However, there is nothing in the record that supports a finding that the matter should be returned to MCBSS in matter, as Petitioner has not demonstrated that MCBSS's August 21, 2020 denial was inappropriate.

Accordingly, while MCBSS attempted to assist Petitioner and her DAR in obtaining the requested Amboy National Bank statements in this matter, the responsibility in obtaining the requested documentation remained on Petitioner. Moreover, the DAR has failed to provide documentary evidence to show that exceptional circumstances existed in this matter that would have necessitated an extension of time to provide the requested documentation. Thus, the August 21, 2020 denial issued by MCBSS in this matter was appropriate.

THEREFORE, it is on this 28th day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED.



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