



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

M.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MORRIS COUNTY OFFICE OF

TEMPORARY ASSISTANCE,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 07232-2020

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. Morris County Office of Temporary Assistance (Morris County) filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 2, 2021 in accordance with an Order of Extension.

This matter arises from the June 16, 2020 denial of Petitioner's Medicaid application due to her failure to provide information that was necessary to determine eligibility. A

Medicaid application was filed on Petitioner's behalf, by her then attorney, Marilyn Atlas-Berney, Esq., with Morris County on March 31, 2020.¹ R-1.

On April 2, 2020, Morris County sent an initial letter to Ms. Atlas-Berney, which requested verifications of various information, including copies of Petitioner's funeral trust document, stating that the contract was not irrevocable and would be counted a resource unless converted; a copy of Petitioner's health insurance card and proof of 2020 premium; and a signed authorized representative form. R-2. The letter provided that if the documentation was not provided within forty-two calendar days from the date of the letter, Petitioner's application could be denied. Ibid.

On May 20, 2020, Morris County sent a second verification letter to Ms. Atlas-Berney, again requesting information related to the funeral trust, as well as proof regarding where Petitioner's Social Security payments were being deposited, copies of statements and proof of the source of opening deposits on three PNC certificates of deposit (CDs), and copies of statements for three PNC Bank accounts held by Petitioner. Ibid. The letter requested that check images, receipts, and invoices with explanations for all transactions over \$2,000 be provided. Ibid. The letter once again provided Petitioner with forty-two calendar days from the date of the letter to provide the documents. Ibid.

On June 5, 2020, Morris County sent a third verification letter to Ms. Atlas-Berney, again requesting information related to the funeral trust and copies of statements and proof of the source of opening deposits for the three PNC CD, as well as check images, receipts, and invoices with explanations for approximately thirty-nine specific transactions from the three PNC bank accounts held by Petitioner. Ibid. All of the specific transactions referenced in the June 5, 2020 letter were over \$2,000. Ibid. The letter provided that the verifications

¹ The Initial Decision provides that Petitioner was appealing the denial of retroactive Medicaid Coverage and that coverage was sought under the Aged, Blind, and Disabled program. ID At 1. However, Morris County notes in its exceptions to the Initial Decision that the denial in this matter was for prospective coverage and that the application was for Managed Long Term Services and Supports.

were due within ten calendar days from the date of the letter or Petitioner's application could be denied. Ibid.

On June 15, 2020, Petitioner's power of attorney (POA), Lawrence D. Raiss, Esq.,² sent a four-page letter to Ms. Atlas-Berney responding to the June 5, 2020 requests for verification. P-2. The letter explained, to the best of his knowledge, the purpose of each of the transactions referenced or stated that Mr. Raiss did not have the information related to the request. Ibid. It is unclear from the record whether Mr. Raiss provided check images, receipts, and invoices related to each of these transactions, as requested in the June 5, 2020 verification letter.³ It is additionally unclear from the record when Mr. Raiss's letter was provided to Morris County. However, on June 16, 2020, Morris County issued a letter denying Petitioner's application for failing to provide information related to the three PNC CDs, and five specific deposits into Petitioner's PNC Bank accounts. R-4.

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

² I note that at the time the fair hearing in this matter, Petitioner was deceased. As a result of Petitioner's passing, the POA held by Mr. Raiss expired and his authority to act on Petitioner's behalf additionally expired. See N.J.S.A. 46:2B-8.5. It does not appear from the record that Mr. Raiss advised the Administrative Law Judge that Petitioner was deceased and after the hearing in this matter, Mr. Raiss provided a copy of the POA agreement, which was no longer valid, to the ALJ via an email dated December 8, 2020. See P-3 and P-4. It is unclear from the record whether an estate had been opened and if so, who was appointed administrator of Petitioner's estate.

³ In his June 15, 2020 letter, Mr. Raiss stated: "I have tried to do the best I can, but certain financial information and documentation is missing. I need additional time to obtain copies of checks, if those are needed." P-2.

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 in this matter reversed the denial and deemed Petitioner eligible for benefits as of March 31, 2020, finding that the verification requests were issued at the beginning of the public health emergency (PHE) caused by the COVID-19 pandemic, which resulted in businesses, such as banks, restricting its access to the public and causing Petitioner's representatives to experience delays in the procurement of the requested documentation.⁴ ID at 3. The Initial Decision further found that despite the limitations faced by Mr. Raiss in obtaining the information requested, he was able to substantially comply with Morris County's requests by submitting a four-page letter, detailing most of the transactions that Morris County was seeking clarification. Ibid. Additionally, the Initial Decision found that Morris County failed to provide Petitioner with additional time to submit the requested verifications even in light of challenges Mr. Raiss faced in obtaining the documentation and

⁴ I note that the Initial Decision additionally provided that since Morris County's offices "remained closed to the public pursuant to the Emergency Order, there was no way for petitioners' representatives to communicate by phone with worker Gelatt, to seek more time or explain that some of the records sought could not be obtained." ID at 3. However, Morris County noted in its exceptions to the Initial Decision that it remained open in a limited capacity throughout the PHE, employees that were working from home had access to email, and phone messages were forwarded to the employee's email.

issued a denial letter one day after Mr. Raiss submitted his letter of explanation. Ibid. I disagree with this assessment.

Morris County requested, through its May 20, 2020 letter, information related to the PNC CDs and requested check images, receipts, and invoices with explanation for all transactions from Petitioner's PNC Bank accounts that were over \$2,000. R-2. Morris County then again requested the same information through its June 5, 2020 letter. Ibid. Specifically, the June 5, 2020 letter referenced thirty-nine transactions, all of which were over \$2,000; requested that Petitioner provide check images, receipts, and invoices with explanations regarding each of these transactions; and requested information related to the PNC CDs. Ibid. Thus, while Morris County only referenced specific transactions in its June 5, 2020 letter, Morris County previously requested that Petitioner provide the same information and provided Petitioner's representatives with approximately twenty-seven days to obtain and submit the requested documentation prior to the June 16, 2020 denial. Petitioner's representatives failed to supply all of the requested documentation in the timeframe provided.

Moreover, while Mr. Raiss's noted in his June 15, 2020 letter to Ms. Atlas-Berney that he no longer had some of the documents that were being requested and was unable to go to the bank to meet with someone to obtain copies of the checks, the record does not support a finding that either Mr. Raiss or Ms. Atlas-Berney advised Morris County that they were having difficulty producing the documentation as a result PHE. There is also nothing in the record to show that Mr. Raiss was unable to obtain any specific documentation as a result of the PHE. It is additionally unclear from the record whether either of Petitioner's representatives specifically requested an extension of time to provide the documentation.

Accordingly, I REJECT the Initial Decision's findings that Petitioner's failure to provide the requested documentation was excused as a result of the PHE and that an extension of time to provide the requested documentation was necessary in this matter. I additionally

REJECT the Initial Decision's findings that Petitioner established eligibility as of March 31, 2020, as Morris County denied Petitioner's application for failing to provide the documentation that was necessary to determine eligibility and as set forth in Morris County's exceptions to the Initial Decision, an eligibility determination related to Petitioner's application would need to be completed prior to an eligibility date being determined.

However, Morris County's May 20, 2020 letter provided Petitioner with forty-two days to submit the requested documentation. R-2. The documentation was, thus, due by July 1, 2020. Morris County then issued the June 5, 2020 verification letter, which, as noted above, requested much of the same information that was contained in the May 20, 2020 letter. Ibid. The June 5, 2020 letter provided Petitioner with ten days from date of the letter to provide the verifications, resulting in a deadline of June 15, 2020, sixteen days less than Morris County had previously provided Petitioner to submit the same documentation. Ibid. Morris County then denied Petitioner's application on June 16, 2020, fifteen days prior to the deadline set forth in its May 20, 2020 verification letter. Because Morris County specifically provided Petitioner with a July 1, 2020 deadline to submit the documentation, it erred in denying Petitioner's application prior to that July 1, 2020 deadline. Accordingly, I am RETURNING this matter to Morris County to provide Petitioner with additional time to submit the requested verifications.

THEREFORE, it is on this 30th day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is hereby RETURNED to the Morris County Office of Temporary Assistance in accordance with this decision.



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