



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

M.C.,

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 11624-2020

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 15, 2021 in accordance with an Order of Extension.

This matter arises from the October 6, 2020 denial of Petitioner's Medicaid application due to her failure to provide information that was necessary to determine eligibility. The matter was appealed on October 21, 2020 by Rebecca Ehren of Senior Planning Services.

On October 22, 2020, DMAHS requested a completed Designation of Authorized Representative (DAR) form. Ms. Ehren subsequently submitted a DAR form that was signed by Petitioner's son and was dated for November 25, 2020. However, Petitioner had passed away in July 2020. Ms. Ehren failed to advise DMAHS in any of her correspondence that Petitioner had passed away, and therefore, the matter was transmitted to the OAL for a fair hearing based upon the documents presented.

The Initial Decision dismissed the Petitioner's appeal as Ms. Ehren did not have standing to pursue the appeal on behalf of Petitioner once she passed away. Initially, there is a brief factual discussion of the underlying issues related to Petitioner's failure to provide documentation that the Monmouth County Division of Social Services (MCDSS) requested in order to determine eligibility. However, the Initial Decision makes no substantive determination related to the failure to submit the requested documentation and exclusively focuses on the issue of standing, as it appropriately overrides any discussion related to Petitioner's failure to provide. Accordingly, the issue before me solely relates to whether Ms. Ehren had the legal authority to file for a fair hearing after Petitioner passed away and before an estate was established.

Petitioner's daughter was made Petitioner's power of attorney (POA) effective July 6, 2018. Respondent's June 4, 2021 Brief at 1. Her POA then appointed Esther Kupher of Senior Planning Services as Petitioner's DAR, effective April 23, 2019. Ibid. Ms. Kupher submitted a Medicaid application on Petitioner's behalf on or about May 28, 2020. R-1. Petitioner passed away in July 2020. ID at 2. On August 24, 2020, MCDSS issued the first request for additional documentation that was necessary to process Petitioner's application. R-2. MCDSS received partial verification from Ms. Kupher on or about September 3, 2020. ID at 3. It appears from the record that MCDSS was not advised that Petitioner had passed away until the partial verification was filed with MCDSS by Ms. Kupher in September 2020. However, the only reference to Petitioner's passing was contained in response to MCDSS's

request for income verification, where Ms. Kupfer stated “[s]ince she passed we cannot get anything further.”¹ A second letter for verifications was issued on September 16, 2020. R-3. Ms. Kupfer sent partial verification on September 30, 2020 and requested an extension of time to obtain bank statements. ID at 3. Petitioner’s application was then denied, effective October 6, 2020 for “fail[ing] to provide corroborating evidence as requested in letters dated 8/24/2020 & 9/16/2020.” R-4.

On October 21, 2020, Ms. Ehren submitted a request for fair hearing on Petitioner’s behalf. Ms. Ehren did not provide a DAR form with the appeal, and on October 22, 2020, DMAHS requested a completed DAR form to process the appeal. Ms. Ehren subsequently submitted a completed DAR form signed by Petitioner’s son on November 25, 2020. She failed to disclose to DMAHS that Petitioner had passed away four months prior.

Upon Petitioner’s death, the POA’s authorization to grant the DAR to Ms. Kupfer 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. 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

¹ The OAL file contains a copy of the undated letter Ms. Kupfer sent to MCDSS, which was received by MCDSS on September 3, 2020. However, it is not marked separately as an exhibit, and it is unclear if it was admitted into evidence in this matter.

. . . 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.

Further, the exceptions filed in this matter on behalf of Petitioner² concede that the DAR was no longer effective following the death of the applicant. Moreover, as Petitioner was deceased for a period of four months prior to the DAR being issued to Ms. Ehren by Petitioner's son and an estate had not been opened where an administrator was appointed who then issued the DAR to Ms. Ehren, the November 25, 2020 DAR was invalid. Accordingly, neither Ms. Kupher nor Ms. Ehren had the authority to act on Petitioner's behalf in requesting a fair hearing in this matter.

I additionally note that the record is still unclear regarding whether an estate has now been opened in this matter, as the only document presented to the ALJ and in exceptions to the Initial Decision is an “Affidavit of Next of Kin in Lieu of Administration,” which was filed on April 19, 2021, and signed by Petitioner's son. The Affidavit provided specially states “DO NOT ACCEPT THIS COPY UNLESS THE RAISE SEAL OF THE MONMOUTH COUNTY SURROGATE IS AFFIXED.” However, the copy provided does not contain a raised seal and only sets forth a filed date. Regardless, at the time that Ms. Ehren filed her request to appeal

² Michael Heinemann, Esq. entered his appearance in this matter on April 29, 2021 and advised that “this firm represents the Petitioner.” However, it is unclear who Mr. Heinemann actually represents, as there is nothing in the record to support a finding that he was directly hired by Petitioner's estate, if one has been opened, and Petitioner, herself, is deceased.

the denial of Petitioner's application, no estate had been opened and to date, no DAR has been provided from the alleged estate to designate Ms. Ehren or any other employee of Senior Planning Services with the authority to act on its behalf in this matter

Accordingly, I FIND that the DAR designation ended upon Petitioner's death, and the November 25, 2020 DAR was invalid, as Petitioner was already deceased at the time it was issued, 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 ^{9th} day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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