



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**

O.M.T.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

UNION COUNTY DIVISION OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 10908-2020

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 September 16, 2021 in accordance with an Order of Extension.

This matter arises from the October 13, 2020 denial of Petitioner's Medicaid application due to her failure to provide information that was necessary to determine eligibility. The Initial Denial reversed the denial. Based upon my review of the record, I

hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ), except as specifically MODIFIED herein.

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).

Here, a Medicaid application was filed on Petitioner's behalf with the Union County Board of Social Services (UCBSS) by the Law Office of Sharon Riverson Mark, P.C. (Law Office) on October 24, 2019. R-1 at Exhibit 1. The cover letter advised that Petitioner was looking for long-term placement in a facility, but that she had approximately \$31,775 to spend down; however, the application was being filed prior to completing the spend down in order for the facility to move Petitioner. P-1 at Exhibit 2. By letter dated October 29, 2019, UCBSS advised the Law Office that it received Petitioner's application, and a notification letter would

be provided if additional information or documentation was needed. P-1 at Exhibit 3. On or about February 7, 2020, the Law Office provided documents to UCBSS that showed that the funds had been spent down and advised that it was seeking a February 1, 2020 effective date for Medicaid benefits. Id. at Exhibit 4. Additional documents and updated information were provided by the Law Office to UCBSS on February 26, 2020 and March 5, 2020. Id. at Exhibit 5 and 6.

On May 20, 2020, UCBSS sent an initial letter that requested verifications of various information related to both Petitioner and her husband, including information related insurance policies, IRA accounts, an investment portfolio account, and bank statements. Id. at Exhibit 7. The verifications were due by June 4, 2020. Ibid. On June 4, 2020, the Law Office advised UCBSS that it was having difficulty obtaining some of the information, including documentation related to the investment portfolio, owned by Petitioner's husband, because the company did not want to accept the Power of Attorney (POA) document held by Petitioner's daughter; however, several of the requested verifications were provided. Ibid. at Exhibit 8. The Law Office sent emails to UCBSS on June 15, 2020 and June 26, 2020 advising that they were still waiting on the investment portfolio statements and some other medical forms regarding a claim for long term care insurance. Id. at Exhibit 9 and 10.

On July 13, 2020, UCBSS sent a second letter for the outstanding verifications previously requested in the May 20, 2020 letter. Id. at Exhibit 11. The verifications were due by July 28, 2020. Ibid. The Law Office emailed UCBSS on July 13, 2020 to inquire as to whether the previously submitted documentation was received, and on July 23, 2020¹ and July 27, 2020 provided various additional documentation related to UCBSS's remaining requests. Id. at Exhibit 12, 13, and 14.

¹ On July 23, 2020, UCBSS advised via email that it was in receipt of previously submitted documentation and that "a final extension of 08/07/2020" was provided. P-1 at Exhibit 12.

On August 20, 2020, UCBSS sent a third letter requesting verification of additional information that was not previously requested, including bank statements for three Bank of America (BOA) accounts found through Petitioner's husband's previously supplied BOA bank statements; withdrawals from and deposits into Petitioner's husband's BOA bank account; a lump sum deposit made into the same BOA bank account from Discover Bank; and two additional deposits made into that same account from FIA. Id. at Exhibit 15. The letter advised that the verifications were due by September 2, 2020; however, the Law Office did not receive the letter until the afternoon of August 31, 2020. Ibid. The Law Office advised UCBSS on September 1, 2020 that it only received the August 20, 2020 letter the day prior and requested additional time to provide the requested verifications. See September 1, 2020 email.² There is nothing in the record to confirm that an extension was officially approved.

The Law Office faxed a request for the requested BOA documentation on September 2, 2020 and then sent the same request to BOA via FedEx on September 4, 2020. P-1 at Exhibit 17. Additionally on September 4, 2020, the Law Office advised UCBSS that the documentation had been requested from BOA and that it will be provided when received. See September 4, 2020 email.³ On September 8, 2020, the Law Office provided some of the requested documentation set forth in the August 20, 2020 letter, and UCBSS was advised that the Law Office was still waiting on the remaining documentation from BOA. P-1 at Exhibit 16. On September 17, 2020, the Law Office advised UCBSS that they were informed by a BOA representative on September 17, 2020 that their request was still being processed. Id. at Exhibit 17. UCBSS was further informed that Petitioner's POA would be visiting a branch location in an attempt to expedite the request; however, as a result of BOA's COVID-19 policies, she was unable to obtain an appointment until the following week. Ibid. On

² The September 2, 2020 email was entered into the record under P-1; however, it was not separately marked as an Exhibit in that packet.

³ The September 4, 2020 email was entered into the record under P-1; however, it was not separately marked as an Exhibit in that packet.

September 24, 2020, the Law Office provided some documentation to UCBSS and advised that Petitioner's POA had met with a BOA agent on September 21, 2020; however, no concrete information or documentation was provided and BOA still had not responded to any written requests for the information. Id. at Exhibit 18.

On September 30, 2020, the Law Office advised UCBSS of all of the previous attempts to obtain the requested information and that when a response was not provided by September 25, 2020, Petitioner's POA called BOA and was given two additional fax numbers to expedite the previously submitted requests. Id. at Exhibit 19. The Law Office additionally provided documentation that the requests were sent to both of the provided fax numbers on September 28, 2020. Ibid.

On October 13, 2020, UCSS denied Petitioner's application for failing to provide the BOA statements requested for the three accounts referenced in the August 20, 2020 letter and the source of the two FIA deposits. Id. at Exhibit 20. The denial letter was received by the Law Office on October 22, 2020. Ibid. Through letters dated October 22, 2020,⁴ October 27, 2020, and October 29, 2020, the Law Office was able to provide all of the documentation related to the outstanding requests.⁵ Id. at Exhibit 20, 21 and 22.

As noted above, the record establishes that Petitioner's representatives made substantial and repeated efforts to acquire the requested documentation contained in all three verification letters from UCBSS and kept in on-going communication with UCBSS, advising them of what steps have been taken to obtain the requested documentation and additionally, requesting extensions of time when the documentation was not promptly

⁴ On October 26, 2020, the Law Office requested additional documentation and information from BOA related to the FIA deposits and three accounts in the August 20, 2020 verification letter. R-1 at Exhibit 5.

⁵ Petitioner submitted a new application for Medicaid benefits with the Hudson County Department of Family Services, which was approved effective October 1, 2020 with retroactive benefits provided from July 1, 2020 through September 30, 2020. See P-1 at Exhibit 22. Accordingly, Petitioner is now only seeking benefits from February 1, 2020 through June 1, 2020 under her October 2019 application filed with UCBSS.

supplied from the entities that the Law Office was contacting. As it relates to the BOA information requested through UCBSS's August 20, 2020 verification letter, the Law Office advised UCBSS on several occasions through both email and letters of the difficulty it was having in obtaining the requested documentation from BOA and provided documentation of each request made to BOA for said documentation. See P-1: September 1, 2020 email, September 4, 2020 email, September 8, 2020 letter (Exhibit 16), September 17, 2020 letter (Exhibit 17), September 24, 2020 letter (Exhibit 18), and September 30, 2020 email (Exhibit 19). Moreover, the Law Office promptly supplied the documentation it had access to or that it received while waiting for the additional documentation to be provided by BOA. By October 29, 2020, UCBSS received all of the requested documentation from the August 20, 2020 verification letter. Given the unique circumstances in this case, the failure to provide the documentation by the timeframes articulated by UCBSS cannot be attributed to any fault of Petitioner or her representatives. In fact, the circumstances of this case show that the delay in obtaining the documentation was wholly outside the control of Petitioner and her representatives. Accordingly, I concur with the Initial Decision's determination that Petitioner's representatives made a conscientious attempt to timely comply with all of the requests made by UCBSS and that their good faith effort to secure and submit the documentation, coupled with the unique circumstances of this situation and the impact of the COVID-19 pandemic on obtaining the requested documentation, as specifically documented by Petitioner's representatives, constituted exceptional circumstances that justified an extension of time in this matter, pursuant to N.J.A.C. 10:71-2.3(c).

However, I disagree with the Initial Decision's findings that UCBSS failed to timely act on Petitioner's application. As noted above, Petitioner's application was filed in October 2019 as a result of the care facility refusing to move Petitioner until a Medicaid application was filed. See P-1 at Exhibit 2. Petitioner's representatives advised that Petitioner needed to spend down approximately \$31,775 and were seeking a December 1, 2019 eligibility date.

Ibid. However, these funds were not spent down until February 2020 and UCBSS was advised of the spend down on February 7, 2020, with additional documentation related to the spend down provided on February 26, 2020 and March 5, 2020. Id. at Exhibit 4, 5, and 6. Accordingly, until the funds were spent down, UCBSS had no reason to process Petitioner's application.

Moreover, on March 9, 2020, a Public Health Emergency resulting from the COVID-19 public health crisis was issued in New Jersey. See Exec. Order No. 103 (March 9, 2020), 52 N.J.R. 549(a) (April 6, 2020). As a result of efforts to mitigate the spread of COVID-19 during that time, timeframes for processing applications were affected. Once the information regarding Petitioner's spend down was provided, UCBSS reviewed Petitioner's application and appropriately issued its first verification letter related to information that was necessary to complete the assessment of Petitioner's application. Additionally, once documentation was provided in response to the May 20, 2020 and July 13, 2020 verification letters, a review of the documentation found additional accounts, including deposits and withdrawals, that needed to be verified by Petitioner. Accordingly, UCBSS appropriately requested documentation through its August 20, 2020 letter. I, thus, MODIFY the Initial Decision accordingly.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision's conclusion that UCBSS's denial of Petitioner's application be reversed and as such, I am RETURNING this matter to the UCBSS to determine whether Petitioner established eligibility

THEREFORE, it is on this 10th day of September 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and MODIFIED in part; and

That the matter is hereby RETURNED to the Union County Board of Social Services
in accordance with this decision.



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