



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

SARAH ADELMAN  
*Commissioner*

JENNIFER LANGER JACOBS  
*Assistant Commissioner*

**STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES**

**F.E.,**

**PETITIONER,**

**v.**

**DIVISION OF MEDICAL ASSISTANCE :**

**AND HEALTH SERVICES AND**

**ESSEX COUNTY BOARD OF**

**SOCIAL SERVICES,**

**RESPONDENTS.**

**ADMINISTRATIVE ACTION**

**ORDER OF RETURN**

**OAL DKT. NO. HMA 8065-2021**

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is April 8, 2022 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's June 2020 application for

Medicaid benefits for failure to provide information regarding his assets and in particular the Agreement of Lease (Master Lease) Petitioner purportedly entered in 2018 with Ashland Properties, LLC.<sup>1</sup> The Master Lease identifies real property at seven different street numbers owned by Petitioner along the same street as subject to the agreement. Essex County sought additional information regarding Petitioner's assets and the terms of the Master Lease. In two letters dated May 6, 2021 and May 17, 2021, Petitioner, who was represented by Senior Change Solutions at that time, was instructed to provide the appraised value of the various properties; the value of his assets at the time of institutionalization; information on whether he could get out of the Master Lease; and further explanation of paragraph 4 of the Master Lease entitled "Rent" which discussed Ashland's "undertaking such other amounts from time to time as mentioned in the Agreement to Lease which compromise a total \$1,235,900." R-1.

In response, Antoinette Koshykar from Senior Change Solutions who identified as Petitioner's designated authorized representative (DAR) sent a letter dated May 21, 2021 stating "the questions you have, I cannot answer other than to send what the attorney . . . response to the Master Lease is which is attached, dated October 1, 2020." [sic]. She failed to answer the questions about the value of the property stating she did not know. Finally she directed anything further to Petitioner's daughter. P-1. Essex County issued a denial letter dated May 28, 2021.

This case is troubling procedurally. I agree that Essex County should have sent

---

<sup>1</sup> There are eight different copies of the Master Lease in the OAL file. Some copies contain the signatures of Petitioner and his daughters but are not countersigned in the witness block. None of the documents are signed by Ashland Properties. One copy contains the name of an individual identified as the "Managing Member" of Ashland Properties but there is no signature. A cover page has a date of August 1, 2018 but the Master Lease states "Made this [blank] day of July, 2018."

the denial notice to Petitioner's daughter or the DAR rather than to Petitioner. Yet the record contains email correspondence dated June 7, 2021 from the DAR acknowledging the denial and that she will have Petitioner's daughter resubmit a new application. The delay in the daughter receiving the notice did not preclude her request for a hearing from being processed and the matter being heard. More concerning is Essex County's failure to appear at three scheduled hearings without explanation. While miscommunications can occur, Essex County is well aware of the OAL process. The Administrative Law Judge (ALJ) decided to proceed with the papers that had been submitted by the parties prior to the scheduled hearing and issued a decision vacating the denial and ordering reconsideration of Petitioner's application. Under these auspices the case is reviewed.

The local County Welfare Agencies evaluate Medicaid eligibility. N.J.S.A. 30:4D-7a; N.J.A.C. 10:71-2.2(a); N.J.A.C. 10:71-3.15. Eligibility must be established in relation to each legal requirement of the program. N.J.A.C. 10:71-3.15. CWAs must verify the value of resources through appropriate and credible sources, which includes evaluation of the applicant's past circumstances and present living standards in order to ascertain the existence of resources that may not have been reported. N.J.A.C. 10:71-4.1. If the applicant's resource statements are questionable, or there is reason to believe the identification of resources is incomplete, the CWA can verify the applicant's resource statements through one or more third parties. Ibid. "The process of establishing eligibility involves a review of the application for completeness, consistency, and reasonableness." N.J.A.C. 10:71-2.9. Applicants must provide the CWA with specific verifications, which are identified for the applicant.

N.J.A.C. 10:71-2.2(e) provides:

As a participant in the application process, an applicant shall:

1. Complete, with assistance from the CWA if needed, any forms required by the CWA as a part of the application process;

2. Assist the CWA in securing evidence that corroborates his or her statements;  
and

3. Report promptly any change affecting his or her circumstances.

[Emphasis added.]

N.J.A.C. 10:71-3.1(b) also requires the applicant to substantiate his application with corroborative evidence from pertinent sources. The CWA must timely process the application. See 42 U.S.C. § 1396a(3); 42 C.F.R. § 435.911; N.J.A.C. 10:71-2.3. The agency must send each applicant written notice of its decision on an application and, if eligibility is denied, the reasons for the denial and the right to request a fair hearing. 42 C.F.R. § 435.913; N.J.A.C. 10:71-8.3. The CWA will deny applications when the applicant fails to timely provide verifications. See N.J.A.C. 10:71-2.2(e), -2.9, -3.1(b).

The Initial Decision determined there were exceptional circumstances in this matter that warranted extra time. In making that finding, the decision found that Essex County had an obligation to “communicate with the applicant to explain why the previous submission was insufficient.” ID at 9. In making this finding, the Initial Decision relies on two prior matters but only cites to the Initial Decisions. Both of those cases were reversed by the respective Final Agency Decisions (FAD). In *J.D. vs. Essex County Board of Social Services*, HMA 3198-2017, decided July 28, 2017, the issue surrounded the date of the second application. The Initial Decision incorrectly entertained arguments surrounding the first application which had also been appealed but withdrawn by the applicant. The FAD reversed on that basis. In *H.P. v. Ocean County Board of Social Services* HMA 1118-2018, decided July 12, 2018 the FAD in reversing the Initial Decision noted that

Petitioner's representative neither addressed the assets in question nor was there a request for additional time in response to the request for information. I disagree with this finding but for the narrow reason below, I hereby MODIFY the decision and RETURN the matter to Essex County.

Petitioner presented an unsigned Master Lease regarding numerous properties he owns. Putting aside that he has never provided a fully executed copy, Essex County sought more information regarding the agreement including a particular paragraph and the value of the properties that he continues to own. The response from his authorized representative was to provide a seven month old letter from an attorney that, by its date, could not be responsive to Essex County's questions. Indeed the DAR writes "[t]he questions you have, I cannot answer other than to send you" the attorney's October 2020 letter. P-1. There was no request for additional time to find out the value of the properties, whether Petitioner can break the lease or provide information about the paragraph mentioning \$1,235,900. As a result, Essex County properly denied the application.

While there are certainly more questions to be answered regarding Petitioner's assets and this lease, the initial questions raised by Essex County needed to be provided. The unsigned Master Lease does not strip Petitioner of ownership yet he has failed to provide the appraised values of those properties. His attorney somehow asserts Petitioner no longer owns these properties yet states Petitioner has bequeathed the properties first to Ashland Properties, LLC in the October 2020 letter and then, in the October 2021 letter, to his daughters which can only be done with property owned by the decedent. Compare P-1 and P-6. The questions raised about whether Petitioner can get out of the lease and explanation of the paragraph discussing rent describing amounts totaling \$1,235,900 were ignored. In fact the two amounts - \$115,000 and \$1,080,900 -

referenced in the attorney's October 2020 letter do not equal the \$1,235,900 mentioned in the lease. Nothing that Petitioner's daughter or DAR presented at the hearing demonstrate that this information was provided or that there was a request for additional time that rose to the level of exceptional circumstances. However, the fact remains that Essex County did not appear at the hearing.

Based on my review of the record and for the reason set forth above, I hereby MODIFY the Initial Decision as set forth above. Due to the unique and specific procedural irregularities in this case and Essex County's failure to appear and prosecute the denial, additional review should occur to timely and completely assess Petitioner's application.

THEREFORE, it is on this 7<sup>th</sup> day of APRIL 2022,

ORDERED:

That the Initial Decision is hereby MODIFIED as set forth above; and

That the matter is RETURNED to Essex County for further action.



---

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