

upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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 forty-five days and Blind and Disabled cases within ninety days N.J.A.C. 10:71-2.3(a) and 42 CFR § 435.912. The timeframe 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, an 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).

On May 26, 2021, an application for Medicaid benefits was filed on Petitioner's behalf by her Designated Authorized Representative (DAR), Mirel Danziger, of ElderGuide,¹ with

¹ The DAR form in this matter was signed by Petitioner the day before he passed away, and Petitioner was deceased during the entire application process in this matter. The DAR expired on Petitioner's death. See N.J.S.A. 46:2B-8.5. See 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

the Morris County Office of Temporary Assistance (Morris County). R-2. On June 25, 2021, Morris County sent a letter to Ms. Danziger, requesting verification of certain information that were necessary to process the application, including, among other things, a copy of Petitioner's spouse's death certificate and "verification of all resources, accounts, and properties that have not already been disclosed starting 05/26/16 until 05/26/21 on a quarterly basis." R-3. The requested verifications were due within forty-five calendar days from the date of the letter. Ibid. On July 19, 2021, Morris County issued a second letter to Ms. Danziger, requesting the same verifications that were previously requested and additionally requesting copies of "Fulton Bank Checking account [statements] starting from 05/26/26 [sic] until closing," closing letter from Fulton Bank, and verification of where Petitioner's income was being deposited. R-4. The letter advised that the verifications were due within twenty-four calendar days from the date of the letter. Ibid. The verifications contained in the July 25, 2021 and July 19, 2021 were, thus, due by August 12, 2021.

On August 11, 2021, Ms. Danziger emailed Morris County, advising that she had sent in a request to Fulton Bank on July 21, 2021 for the requested documentation² and was

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. The DAR designation is analogous to a limited Power of Attorney 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 signed provides that it is revocable at any time, similar to the revocability of a power of attorney. 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. Ms. Danziger failed to advise DMAHS in 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, even though Ms. Danziger's authority to act on Petitioner's behalf expired at his death, months before Ms. Danziger requested a fair hearing in this matter.

² The fax to Fulton Bank requested "[s]tatements for his account from 2.15.21 – closing" and "a letter stating the date the account was closed." P-2. I note that Morris County requested Fulton Bank statements from May 26, 2016 through closing. R-4. It's unclear if Ms. Danziger requested all of the requested statements prior to her August 11, 2021 extension request.

“working with” the bank to obtain same. P-3. Ms. Danziger requested that the application be kept “open until the end of the day.” Ibid. On August 13, 2021, Morris County denied Petitioner’s application due to his failure to provide his spouse’s death certificate, the Fulton Bank checking account statements and closing letter, and the location where Petitioner’s income was being deposited.³ R-5.

The Initial Decision in this matter upheld the denial of Petitioner’s application, and I concur. The requested verifications were due by August 12, 2021. While Ms. Danziger advised Morris County that she submitted a request for statements and a closing letter from Fulton Bank prior to the expiration of the deadlines set by Morris County, Ms. Danziger only asked for an extension of time until the end of the day on August 11, 2021 to provide the documentation. P-3. Ms. Danziger advised Morris County in that email that she was “working with Fulton bank to get the requested documents today.” Ibid. Her email failed to inform Morris County of any issues that she was allegedly having in obtaining the documentation from Fulton Bank nor any additional steps that she had taken to obtain same. Nevertheless, Morris County complied with Ms. Danziger’s request and did not deny Petitioner’s application until August 13, 2021 after the documentation was not received. R-5.

Moreover, the Fulton Bank documentation was not the only outstanding verifications at the time of the denial. Ms. Danziger did not provide the death certificate for Petitioner’s spouse nor confirmation of where Petitioner’s Social Security payments were being deposited. It is uncontested that Ms. Danziger failed to provide all of the requested

³ On August 17, 2021, Ms. Danziger reapplied for benefits on Petitioner’s behalf. R-6. Throughout the verification process for this second application, Ms. Danziger sent several faxes to Fulton Bank to obtain the documentation requested by Morris County and additionally, served a subpoena on Direct Express requesting documentation showing payment and disbursement of Petitioner’s Social Security payments. By letters dated October 26, 2021, Morris County approved Petitioner’s second application for Medicaid benefits effective May 1, 2021 through his death. R-10. This determination letter was not appealed and only the events surrounding the first application are at issue in the present matter.

verifications by the August 12, 2021 deadline contained in the July 19, 2021 verification letter. Morris County determined that the verifications requested in its letters were necessary in order to process Petitioner's application. The failure to provide the requested documentation within the timeframe set forth in the letters appropriately resulted in the denial of Petitioner's application. There is nothing in the record to reflect that Ms. Danziger requested an additional extension of time to provide the requested verifications nor had any exceptional circumstances been presented to Morris County prior to the denial of Petitioner's application that would have necessitated an extension of time to provide the requested documentation.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision's conclusion that Morris County properly denied Petitioner's application.

THEREFORE, it is on this 11th day of MARCH 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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