



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 04972-25

AGENCY DKT. NO. 07000478167

A.G.,

Petitioner,

v.

**ESSEX COUNTY DIVISION OF
FAMILY ASSISTANCE AND
BENEFITS,**

Respondent.

Simon P. Werberger, Esq., for petitioner (Law Office of Simon P. Werberger, attorneys)

Naritha Velez, Family Services Worker, for respondent under N.J.A.C. 1:1-5.4(a)(3)

Record Closed: June 30, 2025

Decided: July 9, 2025

BEFORE **NANCI G. STOKES, ALJ**:

STATEMENT OF THE CASE

The Essex County Division of Family Assistance and Benefits (Essex) denied the petitioner's November 2024 Medicaid application because he failed to provide all requested verifications promptly, despite petitioner's timely extension request that Essex inadequately addressed, and the applicant's continued cooperation. Was the

denial appropriate? No. County welfare agencies (CWAs) must permit a reasonable extension to an applicant who did not produce information due to "exceptional" circumstances beyond their control. N.J.A.C. 10:71-2.3(c); 42 CFR 435.952 (c)(2)(iii).

PROCEDURAL HISTORY

On January 10, 2025, Essex denied the petitioner's application for Medicaid's Managed Long-Term Services and Supports (MLTSS) program, determining that he failed to provide the necessary eligibility verifications.

On March 9, 2025, the petitioner's designated authorized representative (DAR), Moshe Hirsch, of Future Care Consultants, appealed the denial.

The Division of Medical Assistance and Health Services (DMAHS) transmitted the case to the Office of Administrative Law (OAL), where it was filed on March 19, 2025, as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to-15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

DMAHS's transmittal notes that this case is subject to its October 23, 2023, Order, which deems this Initial Decision a Final Decision.

Mr. Hirsch requested an adjournment of the hearing scheduled for June 12, 2025, which I granted over the respondent's objection. Counsel for the petitioner entered an appearance on June 27, 2025, and provided a pre-hearing submission.

I conducted the hearing on June 30, 2025, and closed the record.

FINDINGS OF FACT

Based on the testimony the parties provided, and my assessment of their credibility, together with the documents that the parties submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

On November 29, 2024, Mr. Hirsch applied on behalf of A.G., a nursing home resident, for Medicaid MLTSS. Under the application section used to identify income, the application reported only Social Security income. The application also listed no life insurance policies. P-1. A.G. responded "no" to the question of his disability or blindness.

Essex must verify all sources of income and resources under the Medicaid program to assess financial eligibility. To this end, Essex used electronic databases to obtain certain information. Essex denied an October 2024 application due to the applicant's failure to provide verifications, including TD Bank statements. R-2.

In processing the November 2024 application, Essex noted that specific bank statements showed pension payments and that the petitioner had two life insurance policies, for which it needed the face and surrender cash values.

On December 13, 2024, Essex sent a Request for Information (RFI) seeking complete bank statements, the two life insurance policies, and a Nationwide pension statement. P-3. The letter advised A.G. that he had until December 27, 2024, to provide the requested materials. Ibid.

Mr. Hirsch did not receive the RFI letter for ten days. On December 24, 2024, he requested information from Nationwide via facsimile and supplied an authorization to release information from A.G. P-2. On December 26, 2024, Mr. Hirsch supplied Essex with much of the requested documentation, including years of bank statements. P-3. He also sent a request to Lincoln Heritage with A.G.'s authorization to release information. P-2. Finally, Mr. Hirsch requested that Essex provide an extension by email dated December 26, 2024:

Please find RFI response attached. I included the Life Insurance letter for the Physician's Life, but I don't have one for Lincoln Heritage. I requested

one a couple of times and I'm still waiting for it. It should be here soon. Please grant an extension so I can get it. I included the request I sent so you can see I've been working on it. There is also no pension from Nationwide as far as I know and I don't see it in the bank statements. But I still sent a request to them, see attached. I included 5 years of statements for the Bank of America account as well as the statement for the TD account for November. Please confirm you can extend this case.

[P-4.]

Due to the holidays, Ms. Velez, the family services worker assigned to the case, did not receive the extension request until January 2, 2025. Still, Ms. Velez notes that Essex cannot consider mailing delays due to holidays or weekends. Ms. Velez's supervisor approved a four-day extension until January 6, 2025. R-2. Still, the total extension was ten days from the date of the request.

Although Ms. Velez believes she spoke to Mr. Hirsch on January 2, 2025, the case note for that day does not mention a telephone call; instead, it states that Mr. Hirsch requested an extension. The case notes, kept in the ordinary course of business, document actions on a case, including notices, contacts, or information received. Regardless, Ms. Velez has no personal recollection of a call on January 2, 2025. Mr. Hirsch similarly has no record of a call from Essex that day, which he would have noted in his file. Undeniably, no email or other correspondence from Essex advised the petitioner or Mr. Hirsch that it gave them an extension or the length of the extension. R-2.

When Essex issued the denial on January 10, 2025, Ms. Velez confirmed that the only outstanding item was the Nationwide pension statement. Still, Essex denied the November application stating that "the applicant failed to provide the requested information required to determine eligibility in a timely manner. 42 C.F.R. 435.952."

Mr. Hirsch filed a third Medicaid application for A.G. on January 30, 2025. Essex promptly approved it, effective January 1, 2025, upon receiving the pension statement in March 2025. R-1. Notably, the petitioner supplies the Nationwide pension statement print-out dated February 26, 2025. P-7. A.G. also received three months of retroactive Medicaid coverage from October 2024. Thus, the petitioner's appeal in this case seeks to overturn Essex's denial of the November 2024 application to obtain additional

retroactive benefits from August 2024 through October, or three months before the application.

In sum, I do **NOT FIND** that a preponderance of the evidence exists that the petitioner supplied the necessary eligibility verifications by December 27, 2024. However, I also **FIND** that a preponderance of the evidence supports the petitioner's prompt provision of nearly all the information sought by Essex through the RFI. Petitioner also took steps to demonstrate to Essex that he had requested the few outstanding items from third parties with his extension request. In other words, I **FIND** that Mr. Hirsch made a good-faith effort to comply with Essex's request for verifications, keep Essex updated on his efforts, and that A.G. did not have the other verifications, but needed them from third parties. Furthermore, I do **NOT FIND** that a preponderance of the evidence exists to support that Essex communicated that it granted an extension to the petitioner or that it only granted him an additional four days to supply materials. Absent that information, the petitioner was unable to seek another extension, if needed. Essex also did not send a second RFI to request the outstanding pension statement. Instead, Essex denied A.G.'s application forty-two days after it received it.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Congress created the Medicaid program under Title XIX of the Social Security Act. 42 U.S.C. §§1396 to 1396w. The federal government funds the programs that the states administer. Once the state joins the program, it must comply with the Medicaid statute and federal regulations. Harris v. McRae, 448 U.S. 297, 300 (1980). New Jersey participates in Medicaid through the New Jersey Medical Assistance and Health Services Act (Act). N.J.S.A. 30:4D-1 to -19.5.

The Commissioner of the Department of Human Services (DHS) promulgated regulations implementing New Jersey's Medicaid programs to explain each program's scope and procedures, including income and resource eligibility standards. See, e.g., N.J.A.C. 10:71-1.1 to -9.5 (Medicaid Only); N.J.A.C. 10:72-1.1 to -9.8 (Special Medicaid Programs); E.S. v. Div. of Med. Assistance and Health Servs., 412 N.J. Super. 340, 347 (App. Div. 2010). The Act established DMAHS within the DHS to perform the

administrative functions concerning Medicaid program participation. Bergen Pines County Hosp. v. New Jersey Dep't of Human Serv., 96 N.J. 456, 465 (1984); see also N.J.S.A. 30:4D-4, -5.

CWAs, such as Essex, "assist [DMAHS] in processing applications for Medicaid and determining whether applicants have met the income and resource eligibility standards." Cleary v. Waldman, 959 F. Supp. 222, 229 (D.N.J.1997), aff'd, 167 F.3d 801 (3d Cir.), cert. denied, 528 U.S. 870 (1999). Significantly, an applicant bears the burden of establishing eligibility for Medicaid benefits. D.M. v. Monmouth Cnty. Bd. of Soc. Servs., HMA 6394-06, Initial Decision (April 24, 2007), adopted, Dir. (June 11, 2007), <http://njlaw.rutgers.edu/collections/oal/>. Indeed, a CWA must verify all eligibility factors to process a Medicaid application. See Medication Communication No. 22-04; N.J.A.C. 10:71-1.6. Notably, N.J.A.C. 10:71-4.1(d)(3) requires CWA to verify the value of resources, like those in bank accounts, through "appropriate and credible sources."

During the application process, an applicant is the primary source of information and must cooperate with the CWA in securing evidence to corroborate their statements. N.J.A.C. 10:71-1.6(2). Furthermore, a CWA must verify questionable information provided by an applicant, as outlined in N.J.A.C. 10:71-2.2 and -2.3, and permit the applicant to comply. Indeed, the CWA and applicants have responsibilities during both the application and redetermination processes. Id.

DMAHS issues Medicaid Communications to guide CWAs in processing Medicaid cases. Medicaid Communication No. 22-04, updating Medicaid Communication No. 10-09, addresses case processing timeframes. Medicaid Communication No. 22-04 reiterates that the case processing time limit is forty-five days, or ninety days for individuals with disabilities, beginning the day the CWA receives the application. N.J.A.C. 71-2.3(a), (b).

Under Medicaid Communication No. 22-04 and 42 CFR 435.952(c)(2), if verification results in a discrepancy, insufficient information, or an error, the CWA will send a Request for Information (RFI) letter. The RFI letter will allow the applicant fourteen days to respond. Ibid. Undeniably, the petitioner's application of November 29, 2024, lacked necessary information. Thus, Essex sent an RFI seeking that information.

If the CWA receives no response, it will deny the application for failure to provide the required information under 42 CFR 435.952(c)(2). Id. However, Mr. Hirsch did respond. He supplied multiple items and asked for an extension because a third party held the information that the applicant did not. Essex gave the applicant a short extension but did not send any notification of it. See N.J.A.C. 10:71-2.3(c) (permitting an extension of time to issue an eligibility determination when the applicant did not produce information due to exceptional "[c]ircumstances wholly beyond the control of both the applicant and the [CWA]" that may delay the forty-five or ninety-day processing period.) Ibid. Indeed, when an applicant or their representative "requests additional time to provide information and continues to cooperate in good faith with the [CWA]; a reasonable extension of the time limit may be permitted." Medicaid Communication No. 22-04. Still, at best, an extension is permissible, not required. S.D. v. Division of Med. Assistance & Health Servs. and Bergen County Bd. of Social Services, 2013 N.J. Super. Unpub. LEXIS 393 (February 22, 2013). Regardless, 42 CFR 435.952 (c)(2)(iii), requires that the agency "provide the individual [with] a reasonable period to furnish the additional information" sought. Ibid.

Under Medicaid Communication No. 22-04, the CWA may send an additional RFI letter if the applicant's response to the first RFI prompts the need for further outreach. However, Essex did not do so, even though the case was not beyond the typical forty-five-day processing limit.

The petitioner relies upon several cases to support his position in this case, but they present different factual circumstances. Indeed, each Medicaid application is specific to the individual applying for benefits. Still, when the CWA does not respond to an applicant or their DAR or adequately assist them when asked, DMAHS may reverse a CWA's denial. N.J.A.C. 10:71-2.2; see L.M. v. Union County, OAL DKT. NO. HMA 04213-24, Initial Decision (March 5, 2025), adopted Comm'r (June 3, 2025), <https://njlaw.rutgers.edu/collections/oal/> (the totality of the circumstances warranted reversal, including the efforts of the DAR to secure third-party information and the CWA's failure to communicate).

Here, I **CONCLUDE** that Essex did not afford the applicant a reasonable time to comply with its verification requests, given Mr. Hirsch's documented cooperation and

efforts to obtain the materials, as well as a timely request for an extension, for which Essex supplies no credible evidence that it communicated a response. In other words, I **CONCLUDE** that the applicant documented exceptional circumstances warranting continuation of the application's pending status under N.J.A.C. 10:71-2.3(c). Thus, I **CONCLUDE** that Essex's denial was inappropriate in this situation, and that the November 29, 2024, application must be reinstated for processing and remanded to Essex to determine retroactive eligibility.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Essex must reinstate the November 29, 2024, application for processing and determination of A.G.'s retroactive Medicaid eligibility.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

July 9, 2025

DATE



NANCI G. STOKES, ALJ

Date Record Closed:

Date Filed with Agency:

Date Sent to Parties:

ljb

APPENDIX

WITNESSES

For Petitioner:

Moshe Hirsch, Future Care Consultants

For Respondents:

Naritha Velez, FSW

EXHIBITS

For Petitioner:

- P-1 Medicaid Application
- P-2 Faxes to Nationwide and Lincoln Heritage
- P-3 Response to RFI, less copies of bank records
- P-4 December 26, 2024, email response to RFI and extension request
- P-5 Denial Letter
- P-6 Lincoln Heritage letter
- P-7 Nationwide transfer portal
- P-8 L.M. v. Union County, OAL DKT. NO. HMA 04213-24, Initial Decision (March 5, 2025)
- P-9 L.M. v. Union County, OAL DKT. NO. HMA 04213-24, Final Agency Decision (June 3, 2025)
- P-10 E.M. v. Middlesex County, OAL DKT. NO. HMA 05068-234, Initial Decision (December 8, 2023)
- P-11 E.M. v. Middlesex County, OAL DKT. NO. HMA 05068-234, Final Decision (January 24, 2024)

For Respondent:

R-1 Fair Hearing packet

R-2 Case notes