



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HMA 01758-25

AGENCY DKT. NO. N/A

F.H.,

Petitioner,

v.

MIDDLESEX COUNTY BOARD

OF SOCIAL SERVICES,

Respondent.

Eliyahu Pekier, Esq., for petitioner (Law Office of Simon P. Werchberger, LLC,
attorneys)

Kurt Eichenlaub, Human Services Specialist 3, for respondent, pursuant to
N.J.A.C. 1:1-5.4(a)(3)

Record Closed: May 16, 2025

Decided: June 3, 2025

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

Petitioner F.H. appeals the determination by respondent Middlesex County Board of Social Services (Board) that she was ineligible for Medicaid because she failed to produce information that the Board requested. Was petitioner eligible for Medicaid? No.

Petitioner failed to supply records that the Board needed to determine her countable income. N.J.A.C. 10:71-1.6(a)(2), -5.2.

PROCEDURAL HISTORY

Petitioner was notified of the Board's determination on November 22, 2024, and filed a timely appeal. The Division of Medical Assistance and Health Services (DMAHS) transmitted this matter to the Office of Administrative Law (OAL), where it was filed on January 23, 2025, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A telephonic hearing that was scheduled to be held on March 28, 2025, was adjourned to permit the parties to attempt to resolve the matter. The hearing was held on April 28, 2025, and the record remained open for petitioner to provide additional information and for the parties to submit post-hearing briefs. The record closed on May 16, 2025.

DISCUSSION AND FINDINGS OF FACT

The following is undisputed and therefore I **FIND** it as **FACT**. Petitioner applied for NJ FamilyCare Aged, Blind, Disabled Medicaid on February 12, 2024. R-A. On September 26, 2024, the Board requested multiple documents from petitioner, including documentation of check and cash deposits and written explanations "detailing [the] source of funds" and "why money was given and how long money will continue to be given." This information was due on October 10, 2024. R-B.

The Board determined that petitioner produced everything it requested except written explanations about three cash deposits, dated April 16, 2019 (\$400), July 12, 2019 (\$500), and March 3, 2024 (\$500). Deposit slips that were given to the Board show that the deposits were made by J.R., petitioner's son, who was granted power of attorney. P-38; P-43; P-135.¹

¹ Several other deposit slips were produced. Some included explanatory notes such as "Merry Christmas." See, e.g., P-90. Others did not include such notes. See, e.g., P-91. Presumably, the Board either relied upon the notes and/or received satisfactory explanations about the deposits, as none of these deposits is referenced by the Board in its denial of petitioner's application.

After the bank records were submitted, petitioner's representative Miri Rothberg asked the Board on October 16, 2024, October 23, 2024, October 28, 2024, and November 20, 2024, if it needed additional information. P-27 to P-29. There is no evidence in the record indicating that the Board responded to these inquiries.

The Board denied petitioner's application on November 22, 2024, because she did not detail why the three deposits listed above were made and how long the payments would continue to be made.² R-C.

Petitioner was permitted to supply, after the hearing, evidence showing that she provided the requested information prior to the termination. She produced a February 24, 2025, letter from J.R. explaining that he deposited \$500 into petitioner's account on July 12, 2019, to help her pay her bills. P-A. She also produced an email from another of her representatives, Ruchie Basch, in which she wrote that J.R. deposited \$500 into petitioner's bank account on March 4, 2024, to help her pay her bills. P-B. She did not provide an explanation about the April 16, 2019, deposit.

Parties' Arguments

Petitioner contends that she provided the information that the Board requested because she provided deposit slips showing that J.R. made the deposits at issue and that the Board failed to meet its obligation to assist and adequately communicate with the petitioner about the deficiencies. She also argues that the Board is authorized to only request information about income and that the three deposits could not have been considered to be income, as they were deposited over a five-year period and, as noted, were provided by her son to help with her expenses.

² A fourth deposit, also made by J.R., was deemed to be sufficiently explained given the notation in the memo section of the check.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5, the DMAHS is responsible for administering Medicaid. N.J.S.A. 30:4D-5. Through its regulations, the DMAHS establishes "policy and procedures for the application process." N.J.A.C. 10:71-2.2(b). "[T]o be financially eligible, the applicant must meet both income and resource standards." In re Estate of Brown, 448 N.J. Super. 252, 257 (App. Div. 2017); see also N.J.A.C. 10:71-3.15; N.J.A.C. 10:71-1.2(a).

The Board must calculate an applicant's countable income. N.J.A.C. 10:71-5.2. "All income, whether in cash or in-kind, shall be considered in the determination of eligibility" unless it is specifically excluded by regulation. N.J.A.C. 10:71-5.1(b). Deposits of money into an applicant's bank account are not excluded from the calculation of income. N.J.A.C. 10:71-5.3. While a loan by a family member can be excluded, if it is "actually repayable[.]" "[r]egular contributions to an individual by his or her family, which are made over an extended period of time and which would be impossible to repay given the individual's current and/or future financial status, shall not be considered loans. Contributions of this nature shall be treated as income[.]" N.J.A.C. 10:71-5.3(a)(6)(i). Irregular or infrequently received unearned income shall be excluded if it totals \$60 or less per quarter and is received less than twice per quarter "or cannot be reasonably anticipated[.]" N.J.A.C. 10:71-5.3(a)(12)(i). Similarly, earned income totaling "\$30 or less per quarter and which is received less frequently than twice per quarter or cannot be reasonably anticipated shall be excluded." N.J.A.C. 10:71-5.3(a)(12)(ii).

An applicant is obligated to provide all required information to support their application and is the primary source of information. N.J.A.C. 10:71-1.6(a)(2). In the Medicaid application process, the applicant bears the burden of establishing program eligibility by a preponderance of the credible evidence. Alford v. Somerset Cnty. Welfare Bd., 158 N.J. Super. 302, 310 (App. Div. 1978); In re Polk, 90 N.J. 550, 560 (1982). The Medicaid applicant must: "1. [c]omplete, with assistance from the [county social services agency (CSSA)] if needed, any forms required by the CSSA as a part of the application process; 2. [a]ssist the CSSA in securing evidence that corroborates his or her statements; and 3. [r]eport promptly any change affecting his or her circumstances."

N.J.A.C. 10:71-2.2(e). The applicant bears a duty to cooperate fully with the agency in its verification efforts, providing authorization to the agency to obtain information when appropriate. N.J.A.C. 10:71-4.1(d)(3)(i).

While the applicant is the “primary source of information,” the agency has the available option to seek verification documents directly from collateral sources to “supplement or clarify essential information.” N.J.A.C. 10:71-1.6(a)(2); N.J.A.C. 10:71-2.10(b). “It is well established that State agencies must ‘turn square corners’ in the exercise of statutory responsibilities with members of [the] public.” K.O. v. Div. of Med. Assistance & Health Servs., 2023 N.J. Super. Unpub. LEXIS 1587, *17 (App. Div., Sept. 26, 2023) (quoting W.V. Pangborne & Co., v. N.J. Dep’t of Transp., 116 N.J. 543, 561–62 (1989)).³

“Under N.J.A.C. 10:71-2.2, the case worker must communicate with the applicant regarding the claimed deficiencies and then, under N.J.A.C. 10:71-2.10(b), provide an opportunity for the applicant to verify, supplement or clarify the information before denying an application.” M.L. v. Essex Cnty. Div. of Fam. Assistance & Benefits, 2025 N.J. Super. Unpub. LEXIS 407, *8 (App. Div. March 18, 2025). In this regard, the caseworker must provide “prompt notification to ineligible persons of the reason(s) for their ineligibility.” N.J.A.C. 10:71-2.2(c).

Under N.J.A.C. 10:71-2.3(a) and 42 C.F.R. § 435.912 (2025), the Board must determine eligibility for aged applicants within forty-five days and blind and disabled applicants within ninety days. However, these deadlines “may be extended when documented exceptional circumstances arise preventing the processing of the application within the prescribed time limits.” E.M. v. DHAMS and Middlesex Cnty. Bd. of Soc. Servs., OAL Dkt. No. HMA 05068-22, Final Decision at *2 (January 22, 2024). “It should be understood that exceptional circumstances can arise in determining eligibility for Medicaid. Therefore, if the applicant or their representative continues to cooperate in

³ Unpublished and administrative decisions are not precedential. This and other decisions are referenced here because they provide relevant guidance.

good faith with the Agency, an extension of the time limit may be permitted.” Ibid. (quoting Medicaid Communication 10-09).

In M.L., 2025 N.J. Super. Unpub. LEXIS 407, the petitioner, a nursing home resident, applied to the Division of Family Assistance and Benefits (DFAB) for Medicaid benefits. The DFAB requested Wells Fargo bank account statements and financial statements for specific months, and a Pre-Admission Screening form. Id. at *2. The petitioner produced the bank account statements. Although the DFAB did not issue a subsequent request for additional information it denied the application because the petitioner did not provide “financial statements (including bank statements, pre-paid account statements and direct express statements) from April 2018 through September 2020 and explanations for [a] \$2,100 ATM withdrawal on 1/4/21, \$3,000 withdrawal on 4/5/21 and \$2,000 ATM withdrawal on 1/20/2022 all from Wells Fargo Checking Account ending in [xxxx].” Id. at *2–3. The DFAB did not previously request these items. The administrative law judge (ALJ) reversed the denial, finding that the petitioner substantially complied with the requests. The DMAHS rejected this conclusion, finding that the denial was appropriate because the petitioner did not produce all of the documents required by the DFAB and “did not ask for additional time to provide the necessary information, nor was there any documented exceptional circumstance warranting an extension of time to produce the requested documents.” Id. at *4 (quoting October 26, 2023, DMAHS Final Decision).

The Appellate Division reversed. It noted that after the petitioner responded to the DFAB’s request for information, the case worker’s “duty was to review the pending application and notify petitioner concerning what, if any, additional information was required to make an eligibility determination.” Id. at *10. However, the case worker denied the application “and only then informed petitioner his application was deficient.” Ibid. In reversing the DFAB and the DMAHS, the court highlighted that “State agencies must ‘turn square corners’[.]” Id. at *9. “When this bedrock principle is read together with the above regulations, we easily reach the dispositive legal conclusion: both the DFAB case worker . . . and the petitioner had a duty under the regulations to take affirmative steps to communicate with each other regarding the . . . pending application. The scope of this joint duty clearly includes the parties’ efforts to clarify prior communications about

a pending application.” Id. at *9–10. The court thus remanded the matter and directed the DHAMS and the DFAB to identify the remaining records needed to verify the petitioner’s eligibility; “request, with specificity, any necessary verification documents”; provide a reasonable amount of time for the petitioner to submit the documents; and make a new eligibility determination. Id. at *10.

In J.L. v. Division of Medical Assistance & Health Services, the Medicaid applicant clearly relayed to the board that, despite multiple attempts, she was unable to obtain bank records over which she had no control. Although her husband had power of attorney, the bank would not give him the records. She thus asked the board to help her gather them. Aware of the difficulty, the board represented that it would subpoena the records. The board did not tell her that the bank did not respond to the subpoena⁴ and it did not afford her additional time to attempt to secure the records by other means. Despite this, and although the applicant believed the board was pursuing the records, the board denied her application due to her failure to produce them. The Appellate Division reversed the denial, finding that the applicant relied upon the board’s representation concerning the subpoena; the board did not do what it said it would do; the board never told her that it did not actually pursue the records; and the board did not tell her that she needed to gather them. For these reasons, the court found that the board did not “turn square corners.” 2022 N.J. Super. Unpub. LEXIS 2636 at *13 (December 27, 2022).

In J.P. v. Division of Medical Assistance and Health Services and Atlantic County Department of Family and Community Development, 2024 N.J. AGEN LEXIS 779 (September 23, 2024), the DMAHS affirmed the ALJ’s conclusion that the county agency improperly denied the Medicaid application. It so concluding, it highlighted that the agency did not identify the deficiencies in the denial notice; did not provide a list of outstanding items after the applicant responded to a request for information; and failed to process relevant documents it received from another agency..

⁴ It was later revealed that the Board never served the subpoena.

Here, contrary to petitioner's argument, the Board was required to determine petitioner's countable income.⁵ This process requires an evaluation of all of the money petitioner received, regardless of source or frequency. It thus needed to learn about the deposits at issue. And, unlike in the above-referenced cases, the Board did not expect petitioner to produce documents it did not request or refuse to help locate documents that were unavailable to petitioner. Rather, petitioner simply failed to provide information that the Board specifically and clearly requested in its request for information. While it would have been better had the Board responded to petitioner's representative's inquiries, it would have simply redirected petitioner to its original request for a written explanation of all deposits. There was nothing more to explain. Moreover, even when the representative supplemented the record after the hearing, she did not explain one of the three deposits at issue. For all of these reasons, I am constrained to **CONCLUDE** that petitioner failed to produce information required to assess her Medicaid application and has not demonstrated exceptional circumstances that prevented her from doing so.

ORDER

Based upon the foregoing, I **ORDER** that petitioner's Medicaid application is denied.

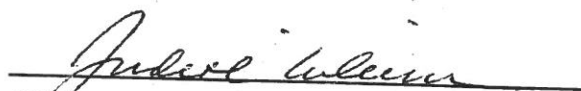
I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION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

⁵ Petitioner cites N.J.A.C. 10:72-2.3(a)(8) in support of this argument. However, it applies to Special Medicaid Programs, and nonetheless does not direct that the Board may not inquire about deposits to applicants' bank accounts.

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.

June 3, 2025

DATE


JUDITH LIEBERMAN, ALJ

Date Record Closed:

May 16, 2025

Date Filed with Agency:

June 3, 2025

Date Sent to Parties:

APPENDIX

Witnesses

For petitioner:

Miri Rothberg

For respondent:

Kurt Eichenlaub, HSS3/Fair Hearing Liaison

Exhibits

For petitioner:

P-1 to 22	February 12, 2024, Medicaid Application
P-23 to 26	September 26, 2024, RFI
P-27 to 29	Email correspondence
P-30 to 147	Response to RFI
P-148 to 149	Denial notice
P-150 to 152	Email correspondence
P-153	Mobile check deposit
P-154 to 195	Regulations and cases
P-A	February 24, 2025, letter from J.R.
P-B	February 25, 2025, email from Miri Rothberg

For respondent:

R-A	February 12, 2024, Medicaid Application
R-B	September 26, 2024, RFI
R-C	Denial Notice
R-D	Bank statements

R-E	Financial statements with notes concerning unexplained transactions
R-F	Call center referral records