



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 13314-24

Medicaid Only
Failure to Verify Eligibility Appeal
N.J.A.C. 10:71-2.2 and -2.3

J.R.A.

Petitioner,

v.

ATLANTIC COUNTY DEPARTMENT
OF FAMILY DEVELOPMENT

Respondent.

For petitioner: Simon P. Wercberger, Esq. (Simon P. Wercberger, LLC, attorneys)

For respondent: Alysia J. Remaley, Esq. (Atlantic County Department of Law, N. Lynne Hughes, Atlantic County Counsel)

BEFORE: Robert D. Herman, ALJ

STATEMENT OF THE CASE

Respondent denied petitioner's Medicaid Only application for failure to provide the following evidence of eligibility under N.J.A.C. 10:71-2.2(e):

Copies of petitioner's Bank of America Statements for account numbers x6797 and x3386.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

- I **FIND** that petitioner or petitioner's representative is **AUTHORIZED** to pursue this appeal; therefore, I **CONCLUDE** that petitioner has **STANDING** to pursue this appeal.
- I **FIND** that petitioner or petitioner's representative is **NOT AUTHORIZED** to pursue this appeal; therefore, I **CONCLUDE** that petitioner has **NO STANDING** to pursue this appeal.

II.

- I **FIND** that petitioner did not provide all the necessary documentation under N.J.A.C. 10:71-2.2(e) and -2.3(a), and that no exceptional circumstances exist under N.J.A.C. 10:71-2.3(c); therefore, I **CONCLUDE** that the Medicaid Only application must be **DENIED** under N.J.A.C. 10:71-2.2(e).
- I **FIND** that petitioner did not provide all the necessary documentation under N.J.A.C. 10:71-2.2(e) and -2.3(a), but that exceptional circumstances exist under N.J.A.C. 10:71-2.3(c) (*note exceptional circumstances in "Additional Findings of Fact/Conclusions of Law"*); therefore, I **CONCLUDE** that the time limit for verification must be **EXTENDED** under N.J.A.C. 10:71-2.3(c).
- I **FIND** that petitioner did not provide all the necessary documentation under N.J.A.C. 10:71-2.2(e) and -2.3(a); exceptional circumstances exist under N.J.A.C. 10:71-2.3(c) (*note exceptional circumstances in "Additional Findings of Fact/Conclusions of Law"*); and petitioner has since provided all the necessary documentation; therefore, I **CONCLUDE** that the Medicaid Only application must be **PROCESSED** to determine eligibility under N.J.A.C. 10:71.

- I **FIND** that petitioner provided all the necessary documentation under N.J.A.C. 10:71-2.2(e) and -2.3(a); therefore, I **CONCLUDE** that the Medicaid Only application must be **PROCESSED** to determine eligibility under N.J.A.C. 10:71.

ADDITIONAL FINDINGS OF FACT/CONCLUSIONS OF LAW

See attached.

ORDER

I **ORDER** that:

- Petitioner's appeal is **DISMISSED** because petitioner has **NO STANDING**.
- Petitioner's Medicaid Only application is **DENIED** under N.J.A.C. 10:71-2.2(e).
- Respondent must **EXTEND** the time limit for verification under N.J.A.C. 10:71-2.3(c).
- The case be **RETURNED** to respondent for respondent to **PROCESS** the application to determine eligibility under N.J.A.C. 10:71.

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.

January 16, 2026

DATE

Robert D. Herman

Robert D. Herman, ALJ

11/19/2025

Date Record Closed:

Date Filed with Agency:

Date Sent to Parties:

APPENDIX

Witnesses

For Petitioner:

Mimi Berkowitz, Designated Authorized Representative

For Respondent:

Mary Lang, Atlantic County Department of Family and Community Development, Medicaid Managed Long-Term Services and Supports Supervisor

Exhibits

For Petitioner:

- P-1 Letter from BoA (May 31, 2024) (one page)
- P-2 Emails (June 2024) (four pages)
- P-3 Letter to BoA (June 17, 2024) (one page)
- P-4 Fax receipt (June 17, 2024) (one page)
- P-5 Fax receipt (June 18, 2024) (one page)
- P-6 Emails (June 2024) (three pages)
- P-7 Emails (July to August 2024) (six pages)
- P-8 Denial letter (August 16, 2024) (six pages)
- P-9 Email from BoA to DAR (August 16, 2024) (one page)
- P-10 Email with attachments (BoA statements) from DAR to CSSA (August 16, 2024) (one hundred seventy-seven pages)
- P-13 "Case Comments" (twelve pages)

For Respondent:

- R-1 CSSA Fair Hearing Packet (forty-four pages)
- R-2 BoA statements (one-hundred seventy-two pages)
- R-3 Emails (July 3, 2024, to August 16, 2024) (six pages)
- R-4 Emails (June 6, 2024, to June 19, 2024) (four pages)
- R-5 Unredacted case activity spreadsheet (one page)
- R-6 BoA letter (May 31, 2024) (one page)

ADDITIONAL FINDINGS OF FACT

In this heavily contested matter, petitioner filed his initial application for Medicaid Managed Long-Term Services and Supports (MLTSS) on May 13, 2024. (R-1 at 2010.) During the course of the application process, which was extended until August 16, 2024, respondent, Atlantic County Department of Family and Community Development (the CSSA) made four requests for production. (R-1 at 13-20.) The central issue to this matter involves the requested production of bank statements from petitioner's two accounts listed on the Asset Verification System (AVS), a database utilized by the CSSA to ascertain if there are additional assets or accounts which are not disclosed in a Medicaid application. Here, two such accounts were identified with Bank of America (BoA), x6797 and x3386. (Ibid.)

On June 27, 2024, the CSSA sent petitioner's Designated Authorized Representative, Mimi Berkowitz (the DAR), the fourth and final MLTSS Request for Information (RFI). (R-1 at 19-20.) Explicitly set forth in that RFI was the due date of July 11, 2024, for submission of the requested documents. Of note, in the first two RFIs, sent on May 13, 2024, and June 6, 2024, there was a request that the petitioner "[p]rovide a copy of all non-electronic deposits and written checks \$500.00 and over for all accounts." (R-1 at 14; 16.) However, such verbiage did not appear in the third and fourth RFIs, June 7, 2024, and July 11, 2024, respectively. (R-1 at 18; 20.)

On August 16, 2024, at 11:11 a.m., Mary Lang, the MLTSS supervisor, finalized review of petitioner's application and issued a denial for the failure to provide requested information. (R-1 at 11-12; 28.) Shortly thereafter, at 12:26 p.m., that same date, the DAR received copies of petitioner's BoA statements for accounts x6797 and x3386, and forwarded them by e-mail to the CSSA at 1:20 p.m. (P-9 at 45; P-10 at 46.)

Though the records were provided two hours after entry of the denial letter on August 16, 2024, Ms. Lang testified that once the denial notice had "left the building," it was considered final. However, Ms. Lang also testified that the denial letter was placed

in a collective mail bin and was assumedly picked up by someone from the mail room. There was no testimony adduced that the letter had actually departed the Atlantic County facility, nonetheless had been deposited in a U.S. Postal Service receptacle, dropped off at a U.S. Post Office, or was posted. Moreover, Ms. Lang also testified that, even though generated, a denial letter may be "rescinded."

For the most part, the DAR was in moderately frequent contact with the CSSA from June 2024 through August 2024, as evidenced via multiple emails between them. (P-6 at 12-17.) By the end of the first week of August, the DAR expressed continued frustration with obtaining the requested bank records from BoA, culminating in her requesting assistance from the CSSA to obtain the records. (P-6 at 14.) In her August 16, 2024, 1:20 p.m. email to the CSSA, the DAR wrote:

Hi,

Today the bank has finally sent the statements for this patient, which I've been continuously pursuing since May. I sent in multiple requests, called the bank many times to follow up, as well as [JRA's] son calling and actually going down to the bank to obtain the requested statements. The only correspondence received from the bank after all my attempts was in June, in which they incorrectly stated that there's no account for the patient. I had done every last attempt within my reach to obtain the statements within the allotted time. Is there any way that you can please accept the documents that I am sending you today and approve the original application?

I appreciate anything you can do for me, thank you!

[R-6 at 12.]

Petitioner submitted limited proofs to establish regular and continued efforts to obtain the third-party documents. Petitioner's initial submission included the June 17, 2024, and June 18, 2024, fax receipts and a copy of the letter request to BoA, entitled "URGENT FOR MEDICAID – PLEASE SEND TODAY [sic] THIRD REQUEST." (P-2; P-

3; and P-4.) A supplemental submission request was made for copies of correspondence, facsimiles, and overnight delivery receipts, establishing regular and continued efforts to obtain the requested BoA documents. Few were provided. As to the latter, which were provided on April 4, 2024, the "Case Comments" are particularly instructive. (P-13.)

While much of the Case Comments are redacted, June 17, 2024, and June 18, 2024, discuss a fax, calls to BoA, and that a request (presumably for the BoA account records) was sent. (P-13 at 7.) In her June 20, 2024, entry, the DAR mentions a May 2024 "overnighted" request for bank records sent to BoA. Additionally, it also refers to an undated, second overnighted request following receipt of a letter from BoA, presumably on or before June 20, 2024, the date of the entry. The next entry mentioning contact with BoA is on July 5, 2024:

07/05/2024 09:43 AM - MBerkowitz
emailed [sic] Talbot_Tolanda []: Hi,I [sic] sent in a request to BOA a few times within the last few months and called as well to follow up on the statements that are needed for the RFI letter. The bank is still not cooperating with my request for the statements.Is [sic] there any way you can subpoena the bank to obtain the bank statements that are needed?Thank you!
[sic]

[P-13 at 6.]

Entries on both July 11, 2024, and on August 6, 2024, reference prior requests and calls to BoA. The entry for August 7, 2024, states, "sent another request to BOA for stmnts." (P-13 at 5.) The subsequent entry, entered one minute later, quotes an email where the DAR sought confirmation of the BoA accounts from the CSSA, and the responsive email from the CSSA where the accounts were confirmed. (ibid.; P-7 at 13.)

On August 16, 2024, the Case Comments also reflect an email from Ms. Lang, stating:

You demanded in numerous emails that we deny it and we did. The letter has already left our office with the Noon mail,

like we do on Fridays. We made our determination. You provided no documentation to show when and how you requested the documents. Any response other than the one letter that said the client didn't have accounts, which we can all see, as we stated, was not accurate. This information was due back in July. You submitted the documents over a month later. This case is over 90 days. We cannot go back keep relooking at cases after we make a determination.

[P-13 at 4-5.]

While documents showing proof of contact or attempted contact do not appear to have been requested by the CSSA, I requested for them to be provided.

With the exception of the two fax documents, the letter to BoA noting it was the "third request," and the Case Comments, there is a noted absence of expected documentary evidence. For example, readily available materials, such as proof of fax correspondence, receipts for overnight mail or, in the alternative, proof of cost for mailing, and the like, were not provided. Moreover, in the Case Comments, one would expect to see detailed explanations of phone calls, including people with whom the DAR spoke at BoA, additional dates of mailing(s), overnight receipt numbers, dates and annotations of conversations with petitioner's son, and such other indicia of regular—or at least attempted—contact with the third-party, here BoA.

During the course of the hearing, I have had the opportunity to listen closely to the testimony of Ms. Lang and Ms. Berkowitz, including making observations as to tonality, pitch, and other indicia of reliability. As to Ms. Lang, I **FIND** her to be entirely credible. Though there were times during her cross-examination where her testimony came through as frustrated, even curt on occasion, there was little question as to its veracity. No greater example may be found such as where she directly admitted the August 16, 2024, denial notice could be rescinded. Though clearly in some discomfort in making the statement, and perhaps even with some qualification surrounding it, she did so without attempting to compromise the truth.

As to Ms. Berkowitz, I **FIND** her to be marginally credible. Ms. Berkowitz's testimony itself was generally acceptable, with the tonality and delivery within normally expected ranges. However, when the subject of overnight receipts was broached, there did appear to be certain discomfort. During this band of questioning, specifically as to the policy and procedures employed, the testimony was somewhat disjointed and illogical under the circumstances. In this vein, the testimony reflected that obtaining overnight tracking information was not easily or readily available. By way of common experience, such practices are inimical to any business which wishes to ensure and prove receipt by the recipient. Add to this, that while requested, such receipts were not provided, bolstering the credibility determination. Moreover, the absence of records regarding the number and extent of calls testified to, proof of mailing, copies of letters, contact with third-parties, and actions of others, such as petitioner's son physically going to a BoA location seeking information, seeds further doubt. While I believe that certain events occurred, based on the testimony and proofs provided, I **DO NOT FIND** they are to the level and extent claimed by Ms. Berkowitz in her testimony.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

In E.M. v. Middlesex Cnty Bd of Soc. Servs., the CSSA's denial of a petitioner's MLTSS application was reversed where the ALJ determined that the petitioner made "ongoing, concerted efforts . . . to obtain the requested documents" from third parties and the CSSA acted arbitrarily in not extending the document submission deadline. E.M. v. Middlesex Cnty Bd of Soc. Servs., OAL Docket No. HMA 05068-23 (Dec. 8, 2023) *11-13, adopted, January 22, 2024. As observed in E.M., the petitioner's conduct aimed towards retrieval was noted, both in terms of diligence and the "heavy efforts" employed. Id. at 12-13. By way of proofs, consistent with E.M., petitioner has the burden to establish, by a preponderance of the evidence:

1. The documents are inaccessible except through application and retrieval from a third-party;

2. The petitioner made reasonable and continuous efforts to obtain the requested documents;
3. The petitioner regularly updated the CSSA as to efforts made and document retrieval status;
4. Despite petitioner's reasonable and timely efforts, the third party has failed to produce the documents requested; and
5. The petitioner timely requested an extension of the production deadline set by the CSSA.

Id.

Here, the original deadline was July 11, 2024. (R-1 at 20.) While it was not "officially" extended, it is not a great stretch to see that the CSSA provided additional time for compliance. This may be adduced from the various emails between the DAR and the CSSA, as well as the DAR's annotations in her Case Comments. (P-6; P-7; P-13 at 5-7.) Moreover, while Ms. Lang testified that the CSSA considered the August 16, 2024, denial letter final upon deposit in the CSSA mail bin, I do not envision the same limitation.

The deficiency in petitioner's proofs, readily distinguishing it from E.M., is the lack of reasonable, and more particularly, continuous efforts to obtain the documents from BoA. While the initial efforts to obtain the BoA documents demonstrated by petitioner through June 2024 is well sufficient, there is a notable gap thereafter, inevitably leading to the denial on August 16, 2024. The absence of records regarding calls with BoA, including with whom the DAR spoke and when, proofs of multiple mailings, copies of letters, proof of overnight delivery where allegedly made, and documentation of the actions of others, all referenced above, from what is essentially the third week of June 2024 to August 16, 2024, underscores the missing, elemental proofs.

By way of further comment, petitioner was not asked nor required to provide proof of effort to the CSSA. While not part of the determination in this matter, providing such documents and other proofs to the CSSA during the application process, even if not

specifically requested, would appear to be the better practice. Under a reasonability approach, whether such disclosures were made is sufficiently important to the overall calculus in determining whether a CSSA acted arbitrarily in refusing to extend a production deadline. Also by way of further comment, because the CSSA did not request written explanation for deposits or checks in excess of \$500.00 in the June 7, 2024, and June 27, 2024, Requests for Information, petitioner's alleged failure to do so in his August 16, 2024, BoA submission was not considered.

In sum, petitioner failed to establish the necessary reasonable and continuous efforts to obtain the third-party documents, here, account statements from BoA. That the statements in question were provided in what is, temporally, moments after denial, is a non sequitur. Considering further the length of time the application was in process, that the initial request for the third-party documents was May 13, 2024, and that petitioner failed to demonstrate the CCSA acted erroneously, arbitrarily, or both, under the circumstances presented, I **CONCLUDE** that the CSSA properly denied petitioner's May 13, 2024, MLTSS application on August 16, 2024.