



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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VALERIE HARR  
*Director*

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

H.R.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE :	:	<b>OAL DKT. NO. HMA 11078-14</b>
AND HEALTH SERVICES AND	:	
CAPE MAY COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Respondent filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is February 19, 2015, in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's September 2013 Medicaid application for failing to provide documents needed to determine eligibility. On September 27, 2013, Aaron Schwalb of Elder Advantage, LLC, (Elder

Advantage) a company specializing in Medicaid planning and representation, filed a Medicaid application on behalf of Petitioner with the Cape May County Board of Social Services (CMCBSS). Over the next nine months, the CMCBSS sent four letters requesting documents pertaining to Petitioner's financial resources. Despite multiple requests for extension of time, Petitioner failed to completely answer any of CMCBSS' requests. As a result, CMCBSS would send another letter requesting missing, additional or more specific information from Petitioner. CMCBSS' requests were issued on September 27, 2013, October 29, 2013, February 19, 2014 and June 12, 2014.

On June 12, 2014, CMCBSS issued its final request for verifications. The letter included both previously requested information and more specific information, to clarify the request. The letter also provided Petitioner with the following notice:

IMPORTANT! If we do not hear from you regarding these items that are needed by one month, July 13, 2014, we will consider that you are no longer interested in Medicaid coverage, and...[the] application will be withdrawn or terminated.

On Friday, July 11, 2014, at 5:21 p.m., Petitioner provided one item of pending information and requested another extension via email.

Petitioner claims she did not have enough time to compile the requested documentation, and that she should have been afforded an extension of time to obtain the remaining documents<sup>1</sup>. The Administrative Law Judge (ALJ) agreed, reversed the denial of Petitioner's application and remanded the matter to

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<sup>1</sup> Interestingly, on January 22, 2014, within thirty days of providing documents pursuant to an extension, Elder Advantage notified CMCBSS that it would be filing a request for fair hearing on

reversed the denial of Petitioner's application and remanded the matter to CMCBSS for further action. Based on my review of the record and for the reasons set forth below, I hereby REVERSE the Initial Decision and uphold the July 14, 2014 denial due to failure to provide verifications.

Eligibility for medical assistance is governed by regulations adopted in accordance with the authority granted to the Commissioner of the New Jersey Department of Human Services and the Division of Medical Assistance and Health Services. N.J.S.A. 30:4D-7. In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. N.J.A.C. 10:71-4.10. County Welfare Agencies (CWA) must determine eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days. N.J.A.C. 10:71-2.3(a); MedCom No. 10-09, and Fed. Reg. 42 CFR 435.91. The time frame 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).

In cases where an application cannot be completed within the designated time period, the CWA must be able to demonstrate that the delay resulted from one of the following:

- (1) Circumstances wholly within the applicant's control;
- (2) A determination to afford the applicant...a further opportunity to develop additional evidence of eligibility...;
- (3) An administrative or other emergency that could not reasonably have been avoided; or
- (4) Circumstances wholly outside the control of the applicant and CWA.



N.J.A.C. 10:71-2.3(c); MedCom No. 10-09.

Contrary to Petitioner's assertion, the regulation does not require CMCBSS to 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. vs. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013). That said, the record does not clearly establish that Petitioner was not at fault for the delay in submitting the requested verifications.

Petitioner engaged a professional Medicaid planner, Elder Advantage, on August 15, 2013.<sup>2</sup> On September 27, 2013, Elder Advantage filed a Medicaid application on Petitioner's behalf. They either knew or should have known that Petitioner would be required to produce five years of financial information. Furthermore, nothing in the record suggests that Petitioner lacked the capacity to aid Elder Advantage in obtaining the five year look back material necessary for processing the application.

Nevertheless, CMCBSS worked with Elder Advantage for nine months trying to compile information in an increasingly financially complicated case. They honored four requests for extension of time to respond. Each request was only partially answered and each partial response raised more questions about additional accounts, policies and possible asset transfers. CMCBSS' June 12, 2014 letter included repeat and new requests based on the previous submissions. The notice highlighted a July 13, 2014 due date. Petitioner did not

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<sup>2</sup> Petitioner paid Elder Advantage a fee of \$17,000 on August 15, 2013 for their "specialized knowledge" and "experience" in "planning, strategy implementation and Medicaid application/ authorization representation." (R-1 at 92).

provide the requested documentation by this date, but requested a fifth extension of time to respond. Petitioner's final request for extension, accompanied by a single documentary response, was received via email after close of business on Friday, July 11, 2014.

N.J.A.C. 10:71-2.3(c) permits a relaxation of the prescribed time limits where "documented exceptional circumstances arise." There is no evidence in the record that that Elder Advantage made any effort to obtain the requested financial material at the time of application, when initially requested or at any point in advance of the deadline. CMCBSS held Petitioner's application open for nine months, honoring four extension requests by Elder Advantage, before issuing a denial for failure to provide documentation. No evidence has been presented to establish the existence of exceptional circumstances warranting a fourth extension of time pursuant to N.J.A.C. 10:71-2.3(c).

I FIND that Petitioner has failed to timely provide the financial verifications requested by CMCBSS. I further FIND that Petitioner does not meet the exceptional circumstances test outlined by N.J.A.C. 10:71-2.3(c).

THEREFORE, it is on this <sup>2<sup>nd</sup></sup> day of FEBRUARY 2015

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Petitioner's September 2013 application remains denied.



Valerie Harr, Director  
Division of Medical Assistance  
and Health Services