



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

JENNIFER VELEZ  
*Commissioner*

VALERIE HARR  
*Director*

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

I.M.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
<b>V.</b>	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE	:	<b>OAL DKT. NO. HMA 9838-2014</b>
	:	
AND HEALTH SERVICES &	:	
	:	
GLOUCESTER COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 15, 2015, in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's application for long term care benefits due to failure to provide information regarding her assets. Petitioner applied for benefits on October 24, 2013. She signed the application as well as a list of information needed to determine eligibility. R-1 at 9. She owned a home but was living with her son for the month prior to entering the nursing home. Gloucester County sent a second request for information in March 2014 before denying the application on March 31, 2014.<sup>1</sup> Those notices were sent to Petitioner's son's house and were not returned by the Post Office. However, in June 2014, Deptford Center nursing home contacted Gloucester County stating that Petitioner had never received the denial notice. Petitioner filed for a fair hearing and named Katrina Vann from the nursing home as her representative. Using the date of the late receipt of the notice, the request for a fair hearing was considered within time and the matter was transmitted to the Office of Administrative Law.

The Initial Decision determined that the Petitioner was entitled to equitable relief under "the excusable neglect standard" due to the fact she was confined to the nursing facility; had no access to her records; had no family, guardian or power of attorney and has dementia. ID at 7. Because of those factors, the Initial Decision also found that while N.J.A.C. 10:71-2.3 permits the dismissal of Medicaid applications when "the applicant has the means and mental capacity to timely" complete the application, Petitioner meets the exceptional circumstance exception as she is physical and mentally disabled."

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<sup>1</sup> Petitioner's case is guided by the 45-day time limit. She is considered aged. The 90-day time limit is only for those individuals who are not aged and who need a disability determination, which can take longer. See Medicaid Communication No. 10-09. That 45-day begins to run at the time of the face-to-face interview which occurred here on October 23, 2014 when Petitioner signed the application and list of missing documentation.

ID at 6 and 7. As a result the Initial Decision concluded that Petitioner's October 2013 application should be reopened and merged with all subsequent documents contained in the application filed on May 25, 2014 by Senior Planning, a company hired by the nursing home to assist Petitioner. For the reasons that follow, I hereby REVERSE the Initial Decision and FIND that the October 2013 application was properly denied.

The Initial Decision cites R. 4:50-1 for the doctrine of excusable neglect. This court rule governs civil practice in the Superior Court of New Jersey which after motion and briefs by a party, permits equitable relief after final judgment or order usually due to a default judgment. The Comment to the rule states that it "applies only to final orders and judgments." The Initial Decision does not indicate what in the Medicaid eligibility process is akin to a default judgment. The use of this rule merely permits the party to have his claim heard and to mount a defense when there is a finding that the "failure to answer or otherwise appear and defend was excusable under the circumstances and unless the defendant has a meritorious defense." See New Jersey Court Rules, Comment 4:50-1. Petitioner has had a fair hearing in which she appeared, testified and had the opportunity to defend the denial notice. Thus, I FIND that this rule fails to apply to the circumstances.

In finding that Petitioner met extraordinary circumstances that would prevent the dismissal of an application "from acutely disabled applicants," the Initial Decision fails to align the finding that Petitioner is "acutely" disabled due to dementia with her demonstrated ability to sign on October 24, 2013 the Medicaid application and the notice that she must bring in additional documents, to bring the denial letter to the nursing home's business staff in July 2014, to sign an

authorized representative form that same month and to file a police report.<sup>2</sup> Compare ID at 3 and 7 with R-1 at 8 and 9 and the July 9, 2014 letter from Katrina Vann from Deptford Center. During the application taken while she was hospitalized in October 2013 Petitioner was able to recount that in October 2008 she gave \$50,000 to her daughter-in-law, further calling into question any findings of incapacity. R-1 at 4. Moreover, the record shows that Petitioner testified at a hearing on September 19, 2014 at length regarding her son and daughter-in-law abandoning her in the hospital in October 2013 prior to being admitted to the nursing home; that she had not been able obtain any of her belongings from her son and that she did not have a copy of the list of documents needed to complete her application despite verifying that her signature was at the bottom of the list. See Petitioner's Post-Hearing Brief at 3-4. At no time does the record before me show that Petitioner's dementia so impaired her ability to testify at the fair hearing or to assist in the application process. The record and the proceeding below is contrary to the findings that Petitioner was so compromised that she could not produce the documents required of every applicant for long term care.

Citing I.L. v. DMAHS, 389 N.J. Super. 354 (2006), the decision ordered that Petitioner's application be placed back in pending and all documentation submitted in the May 2014 application be considered under the October 2013 application. In I.L., the applicant's resources were deemed to be not available to her due to dementia that necessitated the appointment of a guardian. Those resources were only unavailable during the pendency of the guardianship. There

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<sup>2</sup> As she owned her own home and lived there until September 2013, it would be reasonable to assume that her financial information would be located there and not at her son's home.

is no guardianship action here. As evidenced by the multiple signed documents and testimony at the fair hearing, there is no indication that Petitioner's mental capacity is at issue.

The statement that "[d]isabled individuals are a protected class of individuals and cannot be unduly penalized for failing to complete an arduous Medicaid application that involves five years of financial information, particularly when this task is clearly beyond their capability" fails to recognize that individuals seeking long-term care services due to their need for a nursing home level of care are the only Medicaid applicants that are subject to the five year asset look back.<sup>3</sup> ID at 8. See 42 U.S.C. § 1396p(c). To find that having a mental or physical disability, something that would be common for institutionalized individuals, is such an impediment to providing the five years of financial information would render the federal statute a nullity. While there may be extraordinary circumstances that would prevent an applicant from completing this look back and permit an extension of the time limit beyond the 45 days allotted; the facts in this case do not support such a finding.

As stated above, the record shows Petitioner was able to testify at the hearing. Her mental status was not questioned. Additionally, Ms. Vann, who filed a Medicaid application for Petitioner on December 13, 2013 and testified

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<sup>3</sup> On February 8, 2006, Congress enacted the Deficit Reduction Act of 2005 (DRA) (109 P.L. 171), § 6012, the purpose of which, in part, was to close loopholes that allowed Medicaid eligibility for those who had sufficient assets to pay for their own medical care. Congress seeking to penalize and limit the legal maneuvering to gain nursing home benefits under Medicaid, mandated in the DRA that the transfer penalty period start later and that the look-back period be extended. 42 U.S.C.A. § 1396p(c). Resources cannot be transferred or disposed of for less than fair market value during or after the start of the sixty month period ("look-back period") before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. § 1396p(c)(1). If such a transfer occurs, the applicant will be subject to a period of Medicaid ineligibility to be imposed once the person is otherwise eligible for Medicaid benefits. Id.

that she contacted Gloucester County “frequently to inquire about the status of [Petitioner’s] application”, does not mention to Gloucester County any alleged disability that prevented Petitioner from completing the October application during the process. Petitioner’s brief at 8. Nor did Ms. Vann, who was told in December 2013 that there were outstanding documents needed to complete the application, seek to meaningfully assist Petitioner until sometime prior to May 25, 2014 when Deptford Center had hired a company, Senior Planning, to assist Petitioner.<sup>4</sup> See *Vecchoine v. DMAHS and Atlantic County BSS*, OAL Dkt. No. HMA 5641-2014 (decided August 19, 2014). While Gloucester County was prevented by confidentiality rules from discussing Petitioner’s case, nothing prevented Ms. Vann from discussing the case with Petitioner directly.

The filing of the May 25, 2014 application with documentation that was previously requested by Gloucester County does not comport with a finding that “[t]hose who might be helping petitioner have no access to her records and have no legal basis to subpoena them until after a contested case is filed.” ID at 3 and 7. The application was filed before this instant action commenced so that Senior Planning could not use the OAL subpoena power to obtain Petitioner’s records. Petitioner’s ability to sign releases or other documents necessary to obtain the information is apparent from her authorizing Ms. Vann to represent her. As Petitioner testified at the hearing, there appears to be nothing that would have prevented her from making phone calls to obtain the information. Petitioner’s ability to act on her own behalf and to have some of the documentation provided

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<sup>4</sup> Ms. Vann was aware that a pending application would prevent another from being filed so that Senior Planning’s ability to file an application on May 25, 2014 would be constructive notice that the prior application was denied. ID at 3. The May 2014 application is not part of the record.

in the May 2014 application does not support any finding that the documentation could not have been provided sooner.

While there may have been a due process violation in that the denial letter was sent to her son's house, Petitioner has had the opportunity to present her case in a fair hearing. By reissuing the letter on June 9, 2014 to Petitioner's address at Deptford Center, Gloucester County erased the due process issue by giving Petitioner notice of the denial. As her right to a fair hearing was considered timely and her case was transmitted to OAL, any violation by improper service of the notice was cured.

THEREFORE, it is on this 9<sup>th</sup> day of JANUARY 2015

ORDERED:

That the Initial Decision in this matter is hereby REVERSED with regard to the denial of Petitioner's October 2013 application and

That Gloucester County should process and take action regarding Petitioner's May 2014 application.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services