



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Director

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

R.P. :
PETITIONER, : ADMINISTRATIVE ACTION
v. : FINAL AGENCY DECISION
DIVISION OF MEDICAL ASSISTANCE : OAL DKT. NO. HMA 03127-15
AND HEALTH SERVICES AND :
ATLANTIC 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, the documents in evidence and Respondent's exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is February 29, 2016 in accordance with N.J.S.A. 52:14B-10 which requires an

Agency Head to adopt, reject or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on January 14, 2016.

This matter arises from the denial of Petitioner's July 17, 2014 Medicaid application for failure to provide documentation needed to determine eligibility. On July 17, 2014 Petitioner, through his attorney, applied for nursing home/institutional level Medicaid with the Atlantic County Board of Social Services (ACBSS). This was Petitioner's second application for Medicaid benefits.¹ As of September 18, 2014, previously requested financial information was still outstanding. In particular, ACBSS requested documentation concerning a 2009 tax return that showed a Wachovia Securities account earning interest in excess of \$46,000.² ACBSS provided Petitioner's counsel with instructions as to how best to obtain the requested information through the IRS and financial institutions. Petitioner was given until October 18, 2014 to provide the documentation. On October 17, 2014, having not yet contacted the IRS, Petitioner's counsel requested a two week extension. The request was denied, and on October 20, 2014, ACBSS denied Petitioner's Medicaid application.

Based on my review of the record and the applicable rules, I REVERSE the Initial Decision and FIND that Petitioner has not demonstrated by a preponderance of credible evidence that he provided all verifications necessary for ACBSS to make a determination and that ACBSS' denial was appropriate.

The issue below is whether Petitioner timely provided the necessary verification for ACBSS to make an eligibility determination. Both the County Welfare Agency (CWA) and the applicant have responsibilities with regard to the

¹ Petitioner's first Medicaid application was filed on November 19, 2013. On June 10, 2014, six months after Petitioner filed the application, ACBSS denied the application for failure to provide verifications.

application process. N.J.A.C. 10:71-2.2. Applicants must complete any forms required by the CWA; assist the CWA in securing evidence that corroborates his or her statements; and promptly report any change affecting his or her circumstance. N.J.A.C. 10:71-2.2(e). The CWA exercises direct responsibility in the application process to inform applicants about the process, eligibility requirements and their right to a fair hearing; receive applications; assist applicants in exploring their eligibility; make known the appropriate resources and services; assure the prompt accurate submission of data; and promptly notify applicants of eligibility or ineligibility. N.J.A.C. 10:71-2.2(c) and (d). CWAs 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). The regulation does not require ACBSS 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).

The argument that ACBSS must provide Petitioner with additional time because Petitioner’s disability is an exceptional circumstance and failure to do so would constitute discrimination against a disabled individual is unpersuasive for two reasons. First, there is absolutely no evidence in the record to support a

Petitioner appealed the denial which was upheld at OAL Docket No. HMA 7818-2014. Petitioner’s third Medicaid application, filed on April 8, 2015, is pending.

² Petitioner’s tax return showed interest income totaling \$101,839.

finding that Petitioner is disabled. Petitioner is seventy-five years old. He began residing at the Hammonton Center for Rehabilitation and Healthcare (Hammonton) in September 2013. According to Hammonton's attorney, Petitioner was admitted following an unexpected and rapid decline of mental capacity. (Hammonton Brief). The record is devoid of documentary or testimonial medical evidence on this point. Furthermore, Petitioner has never been adjudicated incapacitated nor did Petitioner indicate any disability on his Medicaid application.

Second, many applicants for Medicaid have mental incapacity and to find exceptional circumstances under these circumstances would render the time limit meaningless. See Chalmers v. Shalala, 23 F. 3d 752 (1994) finding that an individual's mental or physical condition does not extinguish the individual's right, authority or power over a resource, noting that, since many disabled individuals receive benefits, using such a condition as a basis to find a resource unavailable "would render the provision meaningless." Id. Furthermore, in S.D. vs. DMAHS and Bergen County Board of Social Services, the Court found that the applicant, who had a power of attorney and then a guardian, had "the capacity, through her representatives, to access her resources." S.D. vs. DMAHS and Bergen County Board of Social Servs., No. A-5911-10 (App. Div. February 22, 2013). Here, Petitioner had the foresight to appoint a Power of Attorney (POA) in April 2010 and Petitioner has been represented by an attorney specializing in elder law at least as early as the filing of his first Medicaid application in November 2013. There is simply nothing in the record to demonstrate exceptional circumstances warranting additional time to provide the requested verifications.

That said, 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. Where Petitioner has filed multiple Medicaid applications, the federal government has directed all fifty states to calculate the look back period based upon the first application for Medicaid. Centers for Medicare and Medicaid Services, State Medicaid Manual §3258.4(C). In this case, Petitioner's first application for Medicaid was filed on November 19, 2013, resulting in a look back period beginning November 2008 for Petitioner's first, second and third applications.

With a baseline look back date of November 19, 2013, ACBSS requested verifications of pension, life insurance, health insurance, property deeds, mortgages, income and other financial information. On September 14, 2014, ACBSS advised Petitioner that certain documentation was still outstanding and noted that a 2009 tax return showed a \$46,000 interest payment. Well within the look back period, ACBSS requested information regarding the interest payment listed on the 2009 tax return. ACBSS guided Petitioner's counsel to petition the Internal Revenue Service (IRS) "for a listing of all 1099's received for the years 2009 through 2013" because "these reports would actually show account numbers" which would help to ascertain the correct information. (R-1). Petitioner was given until October 18, 2014 to provide the requested documentation. Then, on October 17, 2014, having made no requests of the IRS and having waited until October 8, 2014 to request information from Wells Fargo without referencing

an account number, Petitioner's counsel asked for a two week extension to obtain the 1099s. In fact, it was not until eight months later, on the eve of Fair Hearing, that Petitioner's counsel made any request of the IRS.³

Now, Petitioner's counsel argues that the \$46,000 interest payment was a clerical error on the 2009 tax return. The only evidence submitted to support this proposition is Petitioner's counsel's certification stating she was "able to obtain confirmation from the accountant who prepared the erroneous tax return, that the report of \$46,732.00 on petitioner's 2009 tax return was an error on his part." There is no testimony or certification from the accountant himself, nor is there evidence of an amended tax return. Certainly, the tax implications of such a large interest payment would necessitate correction and the filing of an amended return. Yet, none is presented. Furthermore, Petitioner's counsel certifies that the last 1099 issued was in 2008. Are we to conclude from this statement that the \$46,000 interest payment occurred sometime in 2008, potentially within the look back period? If so, why has it not been provided to the county? Instead of explaining the discrepancy and substantiating the alleged clerical error, Petitioner's counsel merely states that the ACBSS's "request for petitioner's 1099 transcript for 2009 was completely irrelevant..."

This is not a case, as the ALJ suggests, where the Petitioner fully cooperated with the ACBSS. Petitioner may have made several document submissions but balked on one of the most significant, waiting eight months after the denial to request information from the IRS that could identify the account yielding over \$46,000 in interest. Petitioner has not demonstrated by a

³ Petitioner's counsel requested the W-2/1099 transcripts for Petitioner for the years 2009-2013 on June 21, 2015. The hearing, originally scheduled for June 22, 2015, was adjourned and a conference call scheduled for August 6, 2015.

preponderance of credible evidence that he timely provided all verifications necessary for ACBSS to make a determination.

THEREFORE, it is on this ^{25th} day of FEBRUARY 2016

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Petitioner's application remains denied.


Meghan Davey, Director
Division of Medical Assistance
and Health Services