

County Department of Family and Community Development's (Atlantic County) December 13, 2021 denial of Medicaid benefits for failure to provide information required to determine eligibility. On December 20, 2021, Sam Stern, submitted a fair hearing request from Preferred Care Absecon on behalf of G.C. Attached to his request was a Designated Authorized Representative (DAR) form dated five months prior and naming Yetti Roth of Future Care Consultants as G.C.'s representative. On December 28, 2021, the matter was transmitted to the OAL. On January 22, 2022, G.C. passed away. Ms. Roth did not disclose to the court that Petitioner has passed away. Instead, she requested multiple adjournments over the course of five months during which no attempt was made to open an estate to properly pursue the appeal. It was not until eight months after G.C.'s passing that Sam Stern moved to open an estate for the purpose of pursuing the Medicaid appeal.

In fair hearings, representation "shall be pursuant to N.J.A.C. 1:10B-5.1," which provides, "An applicant/recipient may appear at a proceeding without representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4. See: 42 C.F.R. 431.206(b)(3). A reading of the regulations makes it abundantly clear that anyone authorized to act in the place of the actual individual whose Medicaid eligibility is at issue does so only as an agent for and on behalf of that individual. J.H. v. Division of Medical Assistance and Health Services and Mercer County Board of Social Services, HMA 06733-09 &06734-09, Interlocutory Order (December 15, 2009). The party at interest in the application and in the fair hearing is always the individual. Id.

Ms. Roth's lack of candor with the court and Mr. Heinemann's appearance on behalf of the deceased individual for whom no DAR, power of attorney or estate granted anyone the authority to retain counsel or act on his behalf, coupled with the facts set forth in the verified complaint, make clear that the Petitioner's interests are not represented in this matter.¹ The regulations for Medicaid benefits create a hearing process for recipients and applicants separate from that of providers." A.T. v. Division of Medical Assistance and Health Services and Monmouth County Board of Social Services, HMA 12107-04, Initial Decision (August 22, 2005). Based on the record before me, it appears that either the facility or its fiscal agent Future Care, which has no independent standing, is inappropriately using the OAL as a forum to have its claims paid.

THEREFORE, it is on this 22nd day of FEBRUARY 2023,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Carol A
Grant

Digitally signed by Carol
A Grant
Date: 2023.02.22
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Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services

¹ The appointment of a DAR is meant to be voluntary and revocable. IT is analogous to a power-of-attorney. There is no authority to permit a DAR to continue after death. 42 C.F.R. § 435.923; E.B. v. Division of Med. Assistance & Health Servs., 431 N.J. Super. 183 (App. Div. 2013).