

statements; and promptly report any change affecting his or her circumstance. N.J.A.C. 10:71-2.2(e). The County Welfare Agency (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 and 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. However, 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 the CWA 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).

This matter was scheduled for a hearing on three separate dates. Petitioner, represented by counsel, appeared for all scheduled dates. The CWA did not appear for any of the three hearing dates. Due to the CWA's repeated failures to appear, the Administrative Law Judge (ALJ) proceeded with an ex parte hearing on the third date. Additionally, the CWA failed to provide a translator for Petitioner and therefore Petitioner was unable to testify at the hearing.

An applicant for Medicaid must be a resident of the United States who is either a citizen or an alien who can be classified as an eligible alien. N.J.A.C. 10:71-3.2(a). Specifically, N.J.A.C. 10:71-3.3(c) states, in part, that the following aliens, if present in the United States prior to August 22, 1996, and if otherwise meeting the eligibility criteria, are entitled to full Medicaid benefits:

1. An alien lawfully admitted for permanent residence;
2. A refugee admitted pursuant to section 207 of the Immigration and Nationality Act;
3. An asylee admitted pursuant to section 208 of the Immigration and Nationality Act;
4. An alien whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act;
5. An alien who has been granted parole for at least one year by the U.S. Citizenship and Immigration Services pursuant to section 212(d)(5) of the Immigration and Nationality Act;
6. An alien who has been granted conditional entry pursuant to section 203(a)(7) of the immigration law in effect prior to April 1, 1980;
7. An alien who is granted status as a Cuban or Haitian entrant pursuant to section 501(e) of the Refugee Education Assistance Act of 1980;

N.J.A.C. 10:71-3.3(c)

Additionally, N.J.A.C. 10:71-3.3(d) states, in part, that the following aliens entering the United States on or after August 22, 1996, and if otherwise meeting the eligibility requirements, are entitled to Medicaid benefits:

1. An alien lawfully admitted for permanent residence, but only after having been present in the United States for five years;
2. A refugee admitted pursuant to section 207 of the Immigration and Nationality Act;
3. An asylee admitted pursuant to section 208 of the Immigration and Nationality Act;
4. An alien whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act;
5. An alien who has been granted parole for at least one year by the Immigration and Naturalization Service pursuant to section 212(d)5 of the Immigration and Nationality Act, but only after the alien has been present in the United States for five years;
6. An alien who has been granted conditional entry pursuant to section 203(a)(7) of the immigration law in effect prior to April 1, 1980, but only after the alien has been present in the United States for five years;
7. An alien who is granted status as a Cuban or Haitian entrant pursuant to section 501(e) of the Refugee Education Assistance Act of 1980;

N.J.A.C. 10:71-3.3(d)

In the Initial Decision, the Administrative Law Judge identified that the CWA's Fair Hearing Summary stated that "Applicant failed to provide verification of immigration status from US Department of Homeland Security" while the CWA letter dated April 27, 2023, stated "Applicant does not meet immigration or citizenship requirements." (R-1). The ALJ correctly points out that these two statements are at odds with each other and it cannot be known, due to the CWA's failure to appear, whether the denial was a result of a lack of verifications or based upon the review of verifications. Additionally, due in part to the CWA's failure to appear and an interpreter not being provided at the hearing, the record does not establish petitioner's date of entry into the United States. The date of entry is crucial when applying N.J.A.C. 10:71-3.3.

The Initial Decision found that the CWA failed to support their determination that petitioner is ineligible or that the CWA worked collaboratively with petitioner to determine eligibility. I agree.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision's conclusion that Essex County's denial of Petitioner's application be reversed and as such, I am RETURNING this matter to Essex County to determine whether Petitioner established eligibility.

THEREFORE, it is on this 12th day of SEPTEMBER 2023

ORDERED:

That the Initial Decision is hereby ADOPTED and RETURNED TO Essex County to process Petitioner's application in accordance with this decision.

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Jennifer Langer Jacobs

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OBO Jennifer Langer Jacobs
Date: 2023.09.12 08:45:37 -04'00'

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services