



State of New Jersey

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

JENNIFER LANGER JACOBS
Assistant Commissioner

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

R.T.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ESSEX COUNTY DEPARTMENT
OF CITIZEN SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 03777-2022

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (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 16, 2023, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated March 25, 2022, the Essex County Department of Citizen Services (Essex County) granted Petitioner's Medicaid application with eligibility as of

February 1, 2022; however, a penalty of sixty days was assessed resulting from a transfer of assets totaling \$21,600 for less than fair market value during the five-year look-back period.

The matter was appealed on May 4, 2022 by Petitioner's Designated Authorized Representative (DAR),¹ Miriam Ovadya of Future Care Consultants. Prior to the scheduled hearing in this matter, Petitioner passed away. ID at 2. On June 6, 2022, Future Care Consultants advised the OAL that Petitioner had passed away and requested that the fair hearing be adjourned. Ibid. The Administrative Law Judge (ALJ) in this matter issued a letter to Ms. Ovadya on July 15, 2022, advising her that a new hearing could not be scheduled in this matter, stating that Ms. Ovadya lacked standing, as her representation of Petitioner ceased upon Petitioner's passing. Ibid. Ms. Ovadya was advised that if an estate would be opened, that entity might choose to assert the claim and pursue the pending appeal. Ibid.

The ALJ held the matter open for more than ninety days to allow correspondence from Future Care Consultants regarding whether an estate was being pursued. Ibid. In that time, neither Future Care Consultants nor any other entity has asserted a claim seeking to appeal the imposed penalty. Ibid.

The Initial Decision dismissed the Petitioner's appeal and returned the matter to DMAHS, finding that the matter is now moot. The Initial Decision makes no substantive determination related to the underlying issue of the imposition of a penalty on Petitioner's receipt of Medicaid benefits, and exclusively focuses on the issue of standing, as it appropriately overrides any discussion related to the imposed penalty. Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same by reference.

Upon Petitioner's death, the authorization granted to Ms. Ovadya ceased. L.M. v. Division of Med. Assistance & Health Servs., Dkt. No. A-6014-17T1, 2020 N.J. Super. Unpub. LEXIS 791 (App. Div. April 30, 2020) and M.F. v. Div. of Med. Assistance & Health Servs.,

¹ The DAR designation in this matter was granted by Petitioner on February 21, 2022. R-5.

No. A-2254-17T2, 2019 N.J. Super. Unpub. LEXIS 733 (Super. Ct. App. Div. Apr. 1, 2019). See also E.D. v. DMAHS, HMA 05284-18, Final Decision, (September 4, 2018) and G.C. v. DMAHS, HMA 03582-19, Order on Remand, (October 24, 2019). There is no authority to permit a DAR to continue after death. The appointment of a DAR is meant to be voluntary and revocable. 42 C.F.R. § 435.923; E.B. v. Division of Med. Assistance & Health Servs., 431 N.J. Super. 183 (App. Div. 2013). Upon the death of the applicant, a key boundary placed upon such an appointment vanishes – the legal authority underlying the appointment changes, and the individual can no longer revoke the appointment. 42 C.F.R. § 435.923(c) (providing that “[t]he power to act as an authorized representative is valid until . . . there is a change in the legal authority upon which the individual or organization’s authority was based.”).

The DAR designation is analogous to a limited POA for the purposes of pursuing a Medicaid application or appeal. The attorney-in-fact is no longer permitted to act on the principal's behalf once he receives notification of the principal's death. See N.J.S.A. 46:2B-8.5. Additionally, the designation form that Petitioner signed provides that it is revocable at any time, similar to the revocability of a POA. See N.J.S.A. 46:2B-8.10. This federally-mandated revocability provision is rendered meaningless if the designation survives the applicant’s death.

In the present matter, there is nothing in the record to support a finding that an estate had been opened and that the administrator of that estate granted Ms. Ovadya, or any other individual or entity, the authority to act on its behalf. Accordingly, I FIND that the DAR designation ended upon Petitioner’s death, and nothing in the record shows that a new authorization from Petitioner’s estate to continue the appeal has been provided. Thus, I FIND that the Initial Decision correctly dismissed the appeal.

THEREFORE, it is on this 10th day of JANUARY 2023,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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