



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**

F.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
V.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 5565-2014
	:	
AND HEALTH SERVICES &	:	
	:	
CUMBERLAND 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 February 17, 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 his assets. Petitioner's step-daughter applied for benefits on March 4, 2014. Cumberland provided a list of missing information regarding Petitioner's bank accounts. P-1 at 6. By letter dated March 24, 2014, the step-daughter was given a deadline of April 7, 2014 to provide the information concerning nine specific areas. P-1 at 7.¹ The record contains no indication that she complied with the deadline or requested additional time. On April 21, 2014, Cumberland County denied the application for failing to provide the information requested in the March 24, 2014 letter.

A request for a fair hearing was filed on April 22, 2014 by Linda Blum who was identified as Petitioner's authorized representative. Ms. Blum is employed by South Jersey Extended Care, the nursing home where Petitioner's resides, and produced an authorization form dated March 12, 2014. In requesting a fair hearing Ms. Blum named Neil McPeak, who also works at the nursing home, to represent her. There is no evidence that either Ms. Blum or Mr. McPeak participated in the application process prior to filing a fair hearing.²

The Initial Decision determined that the Petitioner was entitled to equitable relief under "the excusable neglect standard" due to the fact he was confined to the nursing facility, had no access to his records, and had no family,

¹ E.M. is referred to as both Petitioner's daughter and his step-daughter in the documents. There is also reference to a step-brother but the documents name him as F.M., Jr. indicating he is Petitioner's son. At some point E.M. is added to Petitioner's bank accounts, indicating that a close relationship existed between them.

² The party in this matter is F.M. not the nursing home. The Initial Decision contains statements concerning the nursing home's financial loss in treating Petitioner and how it is "financially prejudicial" to the nursing home to have the application denied. Petitioner's representative represents Petitioner not the nursing home. Nowhere in Medicaid's complex regulatory scheme

guardian or power of attorney. ID at 8. 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 he “is physically and mentally disabled.” ID at 7 and 8. As a result the Initial Decision concluded that Petitioner’s March 6, 2014 application should be reopened so as to permit Mr. McPeak to work collectively with Cumberland County to complete the application. For the reasons that follow, I hereby REVERSE the Initial Decision and FIND that the March 2014 application was properly denied.

The record contains no evidence that Petitioner’s step-daughter even attempted to provide information concerning the nine areas identified by Cumberland County prior to the denial. The first response to Cumberland County’s March 24, 2014 letter is May 30, 2014, well after the case was 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

does the financial hardship to the nursing home impact an applicant’s responsibility to comply with eligibility rules.

has a meritorious defense.” See New Jersey Court Rules, Comment 4:50-1. Petitioner has had a fair hearing in which his representative appeared and had the opportunity to defend the denial notice. Thus, I FIND that this rule fails to apply to the circumstances.

In holding that Petitioner met extraordinary circumstances that would prevent the dismissal of an application “from acutely disabled applicants,” the Initial Decision fails demonstrate what was so extraordinary that prevented the production of documents required of every applicant for long term care. 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.³ ID at 9 (internal footnote omitted). 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

³ 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.

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.

Citing I.L. v. DMAHS, 389 N.J. Super. 354 (2006), the decision ordered that Petitioner's March 2014 application be placed back in pending and all documentation submitted in in the course of the fair hearing be considered as if provided under the prior 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 is no guardianship action here. It is well established that "[t]he law presumes every person sane and casts the burden of establishing insanity on the one asserting it." State v. Hill, 47 A. 814 N.J.Err. & App.,1901. See also Turner v. Cole, 173 A. 613, 616 (N.J.Ch. 1934), "The proposition [is] that [the] normal state of mind of every person is presumed sane until the contrary is shown, Meeker v. Boylan, 28 N. J. Law, 274, and that the burden of proving insanity is on the defendants, who allege it, Trumbull v. Gibbons, 22 N. J. Law, 117, 51 Am. Dec. 253; Whitenack v. Stryker & Voorhies, 2 N. J. Eq. 8-11; In re De Remer's Will, 41 N. J. Law J. 344." Proof of mental incompetency must be from a physician who has personally examined the alleged incompetent, rendered a diagnosis and made a prognosis that the individual is unfit and unable to govern himself or herself and unable to manage his or her affairs. See N.J. Court Rules, (Gann) R. 4:86-2. There is no indication that Petitioner's mental capacity is subject to any incompetency proceedings.

I FIND that the Initial Decision's footnote on page 9 does not stand for the proposition that the federal regulations do not permit a denial of an

application due to hardship or compromised mental capacity. That footnote cites the response to proposed regulations about providing information regarding the Medicaid program and making "Web sites accessible to person who are limited English proficient or have disabilities." The rule does not address the time in which an application must be processed.

Rather the rules regarding processing Medicaid applications are clear that the County Welfare Agencies determine Medicaid eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days. See Medicaid Communication No. 10-09, 42 CFR § 435.911 and N.J.A.C. 10:71-2.3. N.J.A.C. 10:71-2.3 allows for additional time where there are exceptional circumstances that prevented processing of the application within the prescribed time limits.

Here Petitioner is considered aged. The extension of time to 90 days for disabled individuals is due to the need for disability determination that they meet that criteria. Medicaid Communication No. 10-09. Petitioner did not need such a determination and was subject to the 45 day time period.

There is no evidence that exceptional circumstances occurred in this case. Petitioner's step-daughter responded to the March 24, 2014 letter on May 30, 2014 with some explanations but absolutely no indication why she failed to respond by the April 7, 2014. One of the accounts that needed documentation was also in the step-daughter's name, which does not comport with a finding that "[t]hose who might be helping petitioner have no access to his records and have no legal basis to subpoena them until after a contested case is filed." P-1 at 9 and ID at 8. Petitioner's step-daughter was aware of the requested information and, failing to provide it within the time frame, did not request additional time.

I am concerned that the Initial Decision indicates that an applicant's representative should use the subpoena powers of the Office of Administrative Law to get documents. The regulatory scheme provides that it is Petitioner's burden to demonstrate that he is eligible. When a case is denied for failing to provide documentation to make such a finding, the issue at that fair hearing is whether the information was provided. Any discovery stemming from the fair hearing should relate to that issue and not be used to obtain records from third parties so as to complete a Medicaid application. While evidence rules are normally liberally applied, they should not be used to complete a Medicaid application. To do so would cause a bottleneck at the OAL and turn the time limits for determining Medicaid eligibility on its head.

THEREFORE, it is on this 12th day of February 2015

ORDERED:

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

That Petitioner's March 2014 application remains denied.



Valerie Harr, Director
Division of Medical Assistance
and Health Services