



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

S.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

PASSAIC COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 3883-2017

ON REMAND HMA 11596-2016

As Assistant Commissioner of the Department of Human Services (DHS), designated by the Director of the Division of Medical Assistance and Health Services (DMAHS) to assume responsibility over this matter due his recusal, I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is December 7, 2017 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid application filed in November 2015. Passaic County issued a request for more information regarding Petitioner's extensive assets. Petitioner's counsel provided some information in December 2015 and January 2016. Nothing more was provided and the matter was denied by letter dated April 9, 2016. Petitioner appealed claiming that she had provided the necessary documentation to determine eligibility.

The prior Initial Decision found that Petitioner had provided the additional information requested in January 2016. The Order of Remand specifically noted that the documents presented did not support that finding but rather showed that the documents alleged to have been provided were produced long after January 2016 as they contained bank balances that extended until April 2016. Petitioner contends that only two submissions were made after the initial application. The first was in December 2015 and the second in January of 2016. The documents presented at the prior hearing and the certification provided at the current hearing both contain documents dated well after January 2016. As a result, I remanded the case to address these inconsistencies.

I am troubled by the acceptance of a box of documents after the hearing was concluded with no identification other than a letter from Petitioner's attorney and no chance to cross-examine any witness with regard to the documents. This is compounded by the assertion by Petitioner's attorney that these documents had been provided prior to the denial letter on April 9, 2016. This was accepted by the ALJ in finding that Petitioner "timely provided the documents requested and then ultimately provided the additional information requested in January 2016." ID at 4.

Testimony is necessary with regard to the bank records referenced in Petitioner's exceptions. These documents are hearsay evidence. Hearsay is admissible in the Office of Administrative Law but a finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. Here, the documents were submitted post hearing and without any witness to

establish the documents' authenticity, attest to the purpose of the documented transfers or to be cross examined by Passaic County.

Indeed, in two instances the documents Petitioner's alleges were provided in January 2016 included documents dated well after January 2016. Tab 3 contains "bank statements for the period from October 7, 2015 through April 18, 2016, and the deposit verifications." There is no way that Petitioner could have produced statements for February, March and April 2016 in January 2016. The Merrill Lynch documents are similarly dated after January 2016 as they contain statements from January 1, 2016 to March 31, 2016. P-6 at Tab 2. Petitioner cannot claim to have provided P-6 by January 2016 when the documents did not exist at that time.

Rather, except for the two examples above, the documents provided in P-6 do not contain any updated bank statements beyond August 2015. The November 2015 letter specifically requested "updated bank history on all accounts. Spread sheets are needed." P-1. There is no evidence that updated bank statements were provided prior to the April 2016 denial nor did Petitioner request additional time to provide them.

Petitioner also presented a spreadsheet in P-6 without any testimony to introduce it into evidence. The spreadsheet titled "USE THIS ONE" shows assets exceeding \$900,000. That document shows summary balances for 25 bank accounts as of the first day of July, August, September and October 2015. [Footnote omitted]. There are four other accounts listed that Petitioner has deemed "exempt" with no further explanation. While the document should not accept as evidence, on its face it does show that Petitioner did not update the bank balances as requested in the November 9, 2015 letter from Passaic County.

Moreover in a federal complaint [footnote omitted] filed by Petitioner's attorney in September 2016, it was alleged that Petitioner provided additional information to Passaic County on June 8, 2016. The Initial Decision makes no mention of this and this sworn complaint does not align with the finding that Petitioner "ultimately provided the additional information requested in January 2016." ID at 4.

I have again reviewed the record and cannot find evidence that Petitioner addressed the issues identified in the Order of Remand. The remand specifically requests Petitioner to "identify the documents in exhibit P-6 he claims were provided timely as well as explain what was provided on June 8, 2016 and how that comports with the finding that everything was provided in January 2016." This was not done.

The sole document presented by Petitioner on remand does not address this and does not support the findings in the Initial Decision. Rather the new certification continues to make assertions that documents that were chronologically impossible were indeed produced in January 2016. As such I hereby REVERSE the Initial Decision and reinstate the denial of Petitioner's application.

Petitioner and his wife had substantial assets prior to applying for Medicaid. They hired counsel to advise them during the Medicaid process and to engage in Medicaid planning including purchasing a \$600,000 annuity and making \$250,000 in improvements to their home. It appears that the law firm filed the application which Passaic County repeatedly noted was incomplete. There were 16 open financial accounts which does not include four accounts held in Uniform Transfers to Minors accounts. Another 13 accounts were noted as closed during the five year lookback period. Petitioner also opened a Qualified Income Trust (QIT) and a Special Needs Trust (SNT).

Even when Passaic County noted that the certification of Ms. Kagan, which was submitted as evidence that she provided all the necessary information prior to the April 10, 2016 denial included dates that occurred well after April 10, 2016, Petitioner failed to clarify, explain or even acknowledge these repeated errors in his sur reply dated September 20, 2017. Indeed, the Order of Remand specifically sought an explanation how Petitioner and her attorney could aver that everything had been submitted in January 2016 yet certify in a federal complaint that documents were provided through June 2016.

What is attached to the certification makes little sense and does not support a finding that Petitioner provided the information with the January 2016 submission. Ms.

Kagan's certification cites to Exhibit A. Nothing in 56 page document identified as P-1(a) and P-1(b) is marked as Exhibit A. There are no other documents in evidence according to the Initial Decision on remand.

The first document after the certification is titled "outline of documentation sent and time line". It is neither of those things. It is an undated list of various financial accounts that sheds no light on the remanded issues. The next header in this document is a list of open accounts and the balance as of August 1, 2016, four months after Passaic County denied the application and eight months after the date the Initial Decision concluded all documents had been produced. The account statements identified on this document have ending dates from August 29, 2016 through September 23, 2016, long after the case was denied.

The second page of that document lists four Bank of America accounts, two of which were closed in November 2015 and are annotated with the note "I owe you the closing statement." Using the dates referenced on the first page, it appears that in August or September 2016, the November 2015 closing statements for the two Bank of America accounts had not been provided whenever the document was produced in late 2016.

It is unclear when Petitioner provided the information for Account #1850. In the letter dated December 23, 2015, his attorney's office acknowledged that the account had only been opened since October 19, 2015. That account is not referenced or included in the January 2016 submission. I find there is no evidence that Petitioner provided the bank statements on that account in January 2016 or prior to the denial letter in April 2016. Passaic County asked for Petitioner's wife's income. Her counsel only responded with the \$600,000 annuity paying \$10,050.30 a month. The income

from Amazon.com was never identified until Passaic County found it in the volumes of documents. The November 9, 2015 letter asked for proof of deposits and withdrawals of \$1,000 or more. A number of the withdrawals were for credit cards that were not supported by any documents.

The certification also attached approximately 50 pages of documents labeled as spreadsheets that have just two columns – “date” and “details”. The formatting of this spreadsheet has it spilling over onto multiple pages so that at least seven pages are just a long column of dates. There is no explanation of what this was intended to show.

As such, I FIND that there is no basis in the record to support the Initial Decision’s finding that Petitioner provided the necessary documentation in January of 2016 to determine eligibility. Rather the documents presented at this hearing contain balances on dates that occur well after January 2016 as well as after the April 2016 denial of the application.

THEREFORE, it is on this 16th day of DECEMBER 2017,

ORDERED:

That the Initial Decision is hereby REVERSED.



Bonny Fraser, Assistant Commissioner
Department of Human Services