



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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CAROLE JOHNSON  
Commissioner

MEGHAN DAVEY  
Director

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

S.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

ESSEX COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 12638-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is December 10, 2018 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on October 25, 2018.

The matter arises regarding the denial of Petitioner's application for Medicaid benefits. Petitioner is residing in a nursing home. He must be found clinically eligible to receive Medicaid services in a nursing home. In order to determine this, a pre-admission screening (PAS) is completed by "professional staff designated by the Department, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic NF services described in N.J.A.C. 8:85-2.2." N.J.A.C. 8:85-2.1(a). See also, N.J.S.A. 30:4D-17.10, et seq. In this case, the designated staff is the Division of Aging Services' Office of Community Choice Options (OCCO).

The record indicates that OCCO determined that Petitioner was not eligible for nursing home level of care. Essex County Board of Social Services denied the application based on that assessment.<sup>1</sup>

Procedurally OCCO should have been a party to this matter. It appears Essex County tried to have OCCO staff appear as witnesses but that did not happen. As such I FIND that the record is insufficient for determining Petitioner's clinical eligibility. Testimony from OCCO staff and the clinical assessment would be required. Moreover, I FIND no basis to accept the testimony of Linas Riauba, M.D. who is employed by Broadway House Nursing Facility and was designated as Petitioner's authorized representative regarding Petitioner's nursing home level of care. Although the record does not use the term, Dr. Riauba is being considered an expert witness. When a witness seeks to be an expert, they must demonstrate training, experience or knowledge in the area they are professing expertise. See Ryan v. Renny, 203 N.J. 37 (2010). This was not done here. There is no curriculum vita in the record nor was there

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<sup>1</sup> It appears that Petitioner's income is \$1,143 which only permits him to be found eligible for Medicaid benefits using a higher income standard - 300 percent of the SSI benefit amount. In order for eligibility to be granted at this higher income level, nursing level of care must be necessary. See 42 CFR § 435.236 and 42 CFR § 435.1005.


any finding of his areas of expertise. Additionally, his testimony never identified which Activities of Daily Living (ADLs) Petitioner could not perform. N.J.A.C. 8:85-2.1. Regardless to the deficiencies in the findings, a private physician's opinion does not meet the statutory requirement of a PAS being completed by contracted agencies or by the State of New Jersey. N.J.S.A. 30:4D-17.14. At the remanded matter, OCCO will be identified as a party and included in the service list.

THEREFORE, it is on this <sup>29<sup>th</sup></sup> day of NOVEMBER 2018,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED for further proceedings.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services