



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

B.T.

PETITIONER,

v.

UNION COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENT.

:
:
:
:
:
:
:
:
:
:
:
:
:

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 01837-19

As Assistant Commissioner of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Neither party filed Exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 19, 2019 in accordance with an Order of Extension. The Initial Decision was received on September 19, 2019.

This matter arises from the Union County Board of Social Services' (UCBSS) January 8, 2019 notice denying Petitioner's Medicaid application for failure to timely provide information necessary to determine eligibility. The only issue presented here is whether the Petitioner timely provided the necessary verifications for UCBSS to make an eligibility

determination. Based upon my review of the record, I hereby ADOPT in part and REVERSE in part the findings and conclusions of the Administrative Law Judge.

On December 5, 2017, Petitioner became a resident of AristaCare at Delaire (AristaCare). On August 21, 2018, Petitioner, through his representative, filed a Medicaid application with the Union County Board of Social Services (UCBSS). On October 22, 2018, UCBSS issued a request for information in order to determine Petitioner's eligibility for Medicaid. The October 22nd request included information regarding: verification of all third party health insurance; bank statements for specified periods of time for all resources and information as to why Petitioner's Bank of America (BOA) account #0866 went from \$10,882.81 to \$9.88 between October 1, 2017 and February 1, 2018. Petitioner passed away on January 1, 2019. At this point, Petitioner's representative had still not provided the information requested by UCBSS. On January 8, 2019, UCBSS denied Petitioner's Medicaid application for failure to provide the requested information. Thereafter, Petitioner's representative requested a fair hearing on the January 8, 2019 denial of Medicaid benefits.¹ On January 28, 2019, the matter was transmitted to the Office of Administrative Law (OAL). The hearing was held on June 18, 2019, and the record closed on August 22, 2019.²

Both the County Welfare Agency (CWA) and the applicant have responsibilities with regard to the application process. N.J.A.C. 10:71-2.2. Applicants must complete any forms required by the CWA; assist the CWA in securing evidence that corroborates his or her statements; and promptly report any change affecting his or her circumstance. N.J.A.C. 10:71-2.2(e). UCBSS as the County Welfare Agency (CWA) exercises direct responsibility

¹ On January 18, 2019, the DMAHS Fair Hearing Unit received Petitioner's request for fair hearing on the January 8, 2019 denial. The request did not reflect that Petitioner had passed away or that it was being requested by the DAR on behalf of Petitioner. Instead, the request merely included the hand written notation "I don't agree with the decision," and purportedly reflected Petitioner's own interest in pursuing a fair hearing. As a result, the matter was transmitted to the OAL in Petitioner's name only as no representative was identified.

² To establish standing to proceed at the OAL hearing, Cowart Dizzia provided a New Jersey Superior Court Order granting temporary Administration of Petitioner's Estate to Christine H. O'Donnell, Esq., for the limited purpose of preserving his appeal rights in connection with the Medicaid denial. Presumably this Order enables O'Donnell to request a fair hearing, appear at a fair hearing or hire counsel to do the same on behalf of Petitioner. There is no indication that the Order permits O'Donnell to assign representation to a third party company, AristaCare and their counsel. Furthermore, there is no evidence in the record of any attorney-client relationship between O'Donnell and Cowart Dizzia on behalf of Petitioner.

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 UCBSS 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).

Petitioner’s representative does not dispute that it failed to provide the evidence requested by UCBSS. Rather, they argue that it was very difficult to obtain the information and failed to do so through no fault of its own. Petitioner’s representative also asserts that the Medicaid application should not have been denied given their good faith efforts, albeit unsuccessful, to obtain the information requested. Petitioner’s representative, however, does not assert that it needed additional time to provide the information, or that it would ever be able to provide the requested information.

The ALJ found that Petitioner made an unsuccessful but good faith effort to obtain information from the Social Security Administration (SSA), and therefore, should not have been denied on his inability to provide said information. As stated above, applicants may be given additional time, beyond the 45 and 90 limits, to provide information where exceptional circumstances exist. However, the extension is not mandatory even when the delay is due to circumstances outside the applicant’s control. N.J.A.C. 10:71-2.3. Therefore, Petitioner’s good faith efforts to obtain information that it ultimately could not

provide does not, in and of itself, warrant additional time to provide such information. More importantly, Petitioner does not suggest that additional time would result in the production of the requested information. On this point, I hereby REVERSE the ALJ.

For the remainder of the information in question, I agree with the ALJ that the credible evidence in the record demonstrates that Petitioner failed to provide said information prior to the January 8, 2019 denial of benefits. Without this information, UCBSS was unable to complete its eligibility determination, and the denial was appropriate. Additionally, I agree with the ALJ that Petitioner's representative's argument that funds were stolen from Petitioner, or that accounts were not available to Petitioner, is unsupported by the record. Contrary to Petitioner's suggestion, reports of suspicious activity from family and friends are not sufficient proof that the funds were stolen or unavailable to Petitioner. It was not until January 17, 2019, sixteen days after Petitioner passed away and nine days after UCBSS issued the denial that Petitioner's representative filed a police report. The police report does not allege the theft of funds from the account in question, but references AristaCare's attempts to get Petitioner's next of kin to assign his social security payments to the facility.

THEREFORE, it is on this ^{20th} day of NOVEMBER 2019,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the finding that Petitioner's representative's good faith efforts to obtain information, that it ultimately could not obtain, should not have resulted in the denial of his Medicaid application; and

That the remainder of the Initial Decision is hereby ADOPTED.



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