



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

E.G

PETITIONER,

v.

OCEAN COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 03471-20

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 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 23, 2020 in accordance with an Order of Extension. The Initial Decision was received on September 24, 2020.

This matter arises from the Ocean County Board of Social Services' (OCBSS) January 29, 2020 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 OCBSS to make an eligibility determination. Based upon my review of the record, I hereby REVERSE the findings and conclusions of the Administrative Law Judge (ALJ).

On December 13, 2019 Petitioner, through her representative at Elderguide, filed a Medicaid application with OCBSS.¹ On December 20, 2019, OCBSS requested Petitioner provide documentation concerning a monthly annuity within ten days of the notice. On January 2, 2020, OCBSS reiterated its request for the annuity information and requested information in connection with Petitioner's accounts #3397 and #1532. On January 23, 2020, Esther Sturman of Elderguide provided a letter of explanation to the OCBSS. The letter did not contain any documentation to verify the information requested by OCBSS. On January 29, OCBSS denied Petitioner's application for failure to provide the still outstanding documentation.

The ALJ found Petitioner's representatives made a good faith effort to comply with OCBSS' requests, and that Petitioner's inability to provide the documentation was outside of her control. As a result, the ALJ determined that the OCBSS should have given Petitioner's representatives more time to provide the requested information. I disagree.

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). OCBSS as the County Welfare Agency (CWA) exercises direct responsibility 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-

¹ The Initial Decision finds that Petitioner applied for Medicaid benefits on November 29, 2019, the day the application was signed. However, the application was not filed with the OCBSS until December 13, 2019. See. Exhibit R-1.

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 OCBSS 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).

Consistent with N.J.A.C. 10:71-2.3, OCBSS issued its determination 47 days after Elderguide filed Petitioner's Medicaid application. OCBSS' denial was based on Elderguide's failure to provide the information necessary to determine Petitioner's eligibility. OCBSS' request for information was responded to with a letter from Elderguide outlining the steps taken to try to obtain the requested information, and its understanding of the transactions at issue. Elderguide did not request additional time to provide the information. In fact, Elderguide stated "there is nothing more we can do to further verify this."

The ALJ found that the Petitioner's representative credibly testified to their efforts to obtain the information requested by OCBSS. The ALJ relies on this finding to determine that Petitioner should be given additional time to provide said information. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 577 (1988). However, 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." No such evidence was presented in this matter.

At least as early as November 28, 2019, Petitioner was represented by a Power of Attorney (POA). (R-2). On that date, Petitioner's POA appointed Esther Sturman her New Jersey Medicaid Designated Authorized Representative (DAR) to facilitate the filing of her

Medicaid application. While the DAR does not clearly identify the POA, both the POA and Esther Sturman signed the DAR in the presence of witnesses.² Therefore, it can be safely assumed that Ms. Sturman is aware of the POA's identity and contact information. Yet, the POA was not called upon to assist in obtaining the required information and did not testify at the hearing.

Furthermore, although Petitioner argues that these deposits may be the result of a 2012 inheritance of \$59,820.22, such a finding is unsupported by the record. Petitioner's position that nine separate deposits, placed into two of Petitioner's bank accounts, from an unknown Merrill Lynch account, must have been facilitated by an unknown individual is pure speculation. Petitioner provides no evidence of any attempt to gain clarity around the situation beyond making phone calls to a lawyer's office, Bank of America and Merrill Lynch. Petitioner provides no documentation in the form of letters, or otherwise, to support their attempts, nor do they provide any evidence that Petitioner's POA attempted to obtain the requested information.³ There is also no evidence in the record that anyone attempted to contact the executor of the will to determine where he deposited Petitioner's inheritance.

There is no legally competent evidence in the record to support the Petitioner's representatives' testimony of their good faith efforts to obtain the information necessary to determine eligibility. As stated above, applicants may be given additional time, beyond the 45 day limit, to provide information where exceptional circumstances exist. N.J.A.C. 10:71-2.3. The record does not show any extraordinary circumstances warranting additional time to provide the verifications, especially in the absence of a request for additional time.

² The November 28, 2019 DAR was signed by an individual with the initials "MM." The POA's signature is illegible and does not contain a copy of the Power of Attorney designation.


³ In her January 23, 2020 letter, Ms. Sturman indicates that Merrill Lynch was unwilling to provide a letter stating that Petitioner does not have an account or that account 1532 does not belong to her because it is "against their company policy." This is hearsay. It is impossible, based on the record, to determine what specific action is "against company policy." This statement provides no clarity with respect to Petitioner's status as a Merrill Lynch client or owner of the account in question. It also sheds no light on the company policy which may refer to Merrill Lynch's unwillingness to share financial information with anyone other than the Petitioner or her POA.

The documentary evidence in the record shows that Petitioner did not provide the requested documentation in connection with her Medicaid application.

THEREFORE, it is on this ^{21st} day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby REVERSED.



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