



# State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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JENNIFER LANGER JACOBS  
*Assistant Commissioner*

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

E.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

GLOUCESTER COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

AMENDED FINAL AGENCY DECISION

OAL DKT. NO. HMA 14100-2019

As Assistant Commissioner for 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. Neither party filed exceptions to the Initial Decision in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 21, 2020 in accordance with an Order of Extension.

The matter arises regarding the August 6, 2019 denial of Petitioner's second Medicaid application filed on June 18, 2019 by Janell Thomas (Thomas), an employee of the nursing home where Petitioner resides, due to the failure to provide information. Petitioner had filed

a prior application in January 2019. R-2. That application indicated the point of contact was her daughter and Gloucester County was provided with a copy of the Power of Attorney (POA) in favor of the daughter. R-1 at 35. Some information was provided by Petitioner's daughter but she failed to provide other requested information and the application was denied March 18, 2019.

Three months later the application at issue here was filed by Thomas, whose job responsibility is to file Medicaid application. That application provided little to no information about Petitioner's finances. The nursing home attached an unfiled guardianship complaint. No Designation of Authorized Representative (DAR) form was provided. Petitioner's name was familiar as the first application was recently denied so Paul Watkins (Watkins), the Gloucester County case worker, retrieved the first application and, noting the legal authority, the POA was outreached by letter dated June 27, 2019 for more information. ID at 3.

Around the same date, Watkins contacted Thomas and told her a letter requesting information had gone out the POA. Thomas express concern that the POA was not interested in helping with the Medicaid application. ID at 13. Despite the guardianship being filed on June 26, 2019, Thomas did not follow-up in writing with Watkins about the concerns she had with the POA. T20:5-21:2. Nor did she provide copies of the filed complaint.

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). The 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 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. 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 Initial Decision upholds the denial finding that the claim that more time was required contradicted the facts of the case and shifts the responsibility of Thomas and the nursing home to Gloucester County. As the Initial Decision found "[e]xtraordinary circumstances exist if the County is placed on notice or is aware that a situation exists." ID at 26. Thomas testified it was her job was to "do the applications for Medicaid, gather documents, act as a liaison sometimes between the families and the County." T134:4-6. In this case, after filing the application, nothing further was provided to Gloucester to support the Medicaid application or inform them that the unfiled guardianship documents included in the application had indeed been filed or that that the Guardianship Order had been signed.

The cases cited by Petitioner in her post-hearing brief are in large part only the Initial Decisions, which are recommended decisions subject to adoption, modification or rejection. N.J.S.A. 52:14B-10. There are no citations to the Final Agency Decision. For example, the Final Agency Decision in FM v. Cumberland County Board of Social Services, OAL Dkt. No. HMA 5565-2014 rejected and reversed the Initial Decision. See [https://www.state.nj.us/humanservices/dmahs/info/decisions/2015/FMvDMAHSandCCBOS\\_S.pdf](https://www.state.nj.us/humanservices/dmahs/info/decisions/2015/FMvDMAHSandCCBOS_S.pdf). To that end the Initial Decision is correct that F.M. is factually and legally distinguishable as Petitioner is arguing an overturned determination to support her position. Similarly, the ALJ correctly noted that reliance on I.L. v. Div. of Med. Assistance & Health Servs., 389 N.J. Super. 354 (App. Div. 2006) was misplaced as the individual in that matter had neither guardian nor POA to access the life insurance policies that prevented eligibility. Id. at 365. Here, Petitioner had a valid POA during the application process.

The Initial Decision goes on to point out that the nursing home was less than forthcoming about the circumstances surrounding the guardianship. At no time was a copy of the filed guardianship matter, the ultimate guardianship order and revocation of the POA or allegations about fraudulent activities by the POA presented to Gloucester County despite the fact these all occurred prior to the denial letter.<sup>1</sup>

Additionally, the Initial Decision correctly applies the time frames contained in the Medicaid regulations. The program Petitioner was applying for covers aged, blind or disabled individuals. N.J.A.C. 10:71 et seq. Petitioner was ninety-four years old at the time of application. For the purpose of Medicaid an individual is considered aged after the age of sixty-five. See N.J.A.C. 10:71-3.9 and 42 CFR § 436.520. When eligibility is not dependent on establishing disability or blindness, applications are to be processed within 45 days. When eligibility does depend on establishing disability or blindness, the county must complete an application within 90 days as it will likely take longer for individuals who must undergo a medical determination of disability before being found eligible. See N.J.A.C. 10:71-2.3; Medicaid Communication No. 10-09 and State Medicaid Manual § 3277. Since Petitioner did not require a disability determination as she was considered aged, there was no need to take 90 days to process the case as she alleges.

I FIND that based on the facts including the testimony and documents provided Gloucester County acted on the application based on the legal authority of the POA and discussed its handling of the application with Thomas, who did not raise an objection or provide Gloucester County with any further documentation while the application was pending. Thus for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision's conclusion that Gloucester County properly denied the application.

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<sup>1</sup> Counsel for the nursing home stated the POA had been subpoenaed to testify at the hearing. T-4:21-5:4. The Initial Decision notes that, despite a request, a copy of the subpoena was not provided. ID at 29.

THEREFORE, it is on this <sup>21st</sup> day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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