

Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same by reference.

This matter arises from Atlantic County's April 1, 2022 denial of Petitioner's Medicaid application because her resources exceeded the \$2,000 limit pursuant to N.J.A.C. 10:71-4.5. The determination was appealed on April 22, 2022 by Esther Klahr, an employee of LTC Consulting Services. In response, the Division of Medical Assistance and Health Services (DMAHS) requested a Designated Authorized Representative (DAR) form, indicating Petitioner had appointed Klahr her representative. On May 16, 2022, Klahr provided a copy of the DAR form dated November 10, 2021. There was no indication that Petitioner was deceased, having passed on February 22, 2022. Consequently, the matter was transmitted to the OAL. No one appeared on behalf of petitioner at the scheduled July 1, 2022 hearing.

The Initial Decision dismisses the case, finding the Petitioner abandoned the case and that the DAR lacked standing to proceed. The ALJ noted that Petitioner had executed the DAR in November 2021 and that Petitioner passed away on February 22, 2022. Upon Petitioner's death, that authorization ceased. L.M. v. Division of Med. Assistance & Health Servs., Dkt. No. A-6014-17T1, 2020 N.J. Super. Unpub. LEXIS 791 (App. Div. April 30, 2020) and M.F. v. Div. of Med. Assistance & Health Servs., No. A-2254-17T2, 2019 N.J. Super. Unpub. LEXIS 733 (Super. Ct. App. Div. Apr. 1, 2019). See also E.D. v. DMAHS, HMA 05284-18, Final Decision, (September 4, 2018) and G.C. v. DMAHS, HMA 03582-19, Order on Remand, (October 24, 2019). There is no authority to permit a DAR to continue after death. The appointment of a DAR is meant to be voluntary and

revocable. 42 C.F.R. § 435.923; E.B. v. Division of Med. Assistance & Health Servs., 431 N.J. Super. 183 (App. Div. 2013). Upon the death of the applicant, a key boundary placed upon such an appointment vanishes — the legal authority underlying the appointment changes, and the individual can no longer revoke the appointment. 42 C.F.R. § 435.923.

The DAR designation is analogous to a limited Power of Attorney for the purposes of pursuing a Medicaid application or appeal. The attorney-in-fact is no longer permitted to act on the principal's behalf once he receives notification of the principal's death. See N.J.S.A. 46:2B-8.5. Additionally, the designation form that Petitioner signed provides that it is revocable at any time, similar to the revocability of a power of attorney. See N.J.S.A. 46:2B-8.10. This federally mandated revocability provision is rendered meaningless if the designation survives the applicant's death.

I FIND that the DAR designation ended upon Petitioner's death and nothing in the record shows that the DAR received a new authorization from Petitioner's estate to continue the appeal. Thus, I FIND that the Initial Decision correctly dismisses the appeal.

THEREFORE, it is on this ^{19th} day of AUGUST 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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