



State of New Jersey

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

K.O.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MORRIS COUNTY OFFICE OF
TEMPORARY ASSISTANCE,
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 07290-2021

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. The Morris County Office of Temporary Assistance (Morris County) filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is April 25, 2022, in accordance with an Order of Extension.

This matter arises from the August 6, 2021 denial of Petitioner's Medicaid application due to her failure to provide information that was necessary to determine eligibility.

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 circumstances. 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) and 42 CFR § 435.912. 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 regulations do not require that the CWA 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, the extension is permissible. N.J.A.C. 10:71-2.3; S.D. v. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013).

A Medicaid application with Morris County was filed on Petitioner's behalf on February 25, 2021. R-1 at 2-17. On March 9, 2021, Morris County sent an initial letter to Petitioner's attorney, which requested verification of information related to Petitioner, including an updated copy of Petitioner's Medicare card, a copy of Petitioner's Social Security award letter, a copy of a HUD statement, a copy of the death certificate for Petitioner's husband, verification regarding whether Petitioner maintained a personal needs allowance (PNA) account with her nursing facility, verification of whether Petitioner was seeking retroactive Medicaid benefits, and a letter from Petitioner's nursing facility that provided

Petitioner's admission date. Id. at 18-19. Petitioner's attorney provided a response with documentation on March 11, 2021. P-2.

Morris County issued a second letter to Petitioner's attorney on April 25, 2021, requesting additional documentation including a five-year look-back for a Citibank account from February 1, 2016 through February 1, 2021, a copy of the entire HUD statement, a copies of the PNA statements starting with the opening of the account through present, verification regarding any additional health or prescription insurance that is currently active, copies of the front and back of any insurance cards, current health and prescription premium statements, and proof of payment of health and prescription premiums. R-1 at 20-21. Petitioner's attorney provided documentation in response to these requests on May 5, 2021. P-3.

On June 6, 2021, Morris County issued a third letter to Petitioner's attorney, requesting additional documentation, including a five-year look-back related to another Citibank account from February 1, 2016 through February 1, 2021, detailed explanations, including copies of deposit slips and a copy of the check or deposit image, for five specific deposits into Petitioner's Citibank account that was set forth in the April 25, 2021 letter, verifications related to bill payments made to four separate individuals ranging from \$80 to \$2,000, a complete and current copy of a Veterans Administration (VA) award letter, a detailed explanation of a \$3,000 withdrawal from Petitioner's Citibank account on September 24, 2018, a copy of the front and back of Petitioner's Part C and Part D Medicare cards, verification regarding whether Petitioner's spouse had a will, and verification if Petitioner's spouse had any additional resources that were not already disclosed, such as investment accounts, IRA/401Ks, stocks, bonds, life insurance policies, vehicles, etc. R-1 at 22-23. Petitioner's attorney provided a response to the requests on June 11, 2021. P-4. The email stated that Petitioner's husband "did have a will, however, the family no longer has a copy." Ibid.

By letter dated August 6, 2021, Morris County denied Petitioner's application for failing to provide requested verifications. P-1 at 28-34. The letter advised that the Petitioner failed to provide a five-year look-back on the Citibank account that was referenced in the June 6, 2021 letter, detailed explanations for two deposits of \$2,000 into Petitioner's Citibank account referenced in the April 25, 2021 letter, a complete and current copy of the VA award letter, the front and back of Petitioner's Medicare Part D insurance card, and verification of Petitioner's spouse's will. Ibid.

The Initial Decision found that the denial of Petitioner's application was improper because Morris County failed to "sufficiently communicate with Petitioner to explain why the response to the Third Request was insufficient" and "that Petitioner would have promptly responded to any notice by the Agency of a deficiency and worked with the Agency to provide the information in a timely fashion." ID. at 6-7. I disagree.

Morris County determined that the outstanding verifications were necessary in order to determine Petitioner's eligibility, and as noted above, it was the Petitioner's responsibility to obtain the documentation that Morris County deemed necessary to process her application. See N.J.A.C. 10:71-2.2(e). The requested verifications were not provided by the deadline set forth in the June 6, 2021 letter, which was ten calendar days from the date of the letter. Aside from the VA award letter, Petitioner does not contend that the outstanding verifications were timely provided. Instead, Petitioner is now arguing that the documentation requested was not necessary or was unavailable.

Specifically, Petitioner argues that the Citibank account set forth in the June 6, 2021 letter was not an account number but a debit card held by Petitioner.¹ However, Petitioner did not advise Morris County that the account statements requested were for a debit card until after the deadline set forth in the June 6, 2021 letter. In fact, Petitioner failed to make

¹ Morris County states in its exceptions to the Initial Decision that it was actually a debit card under the name G.O., which could either be Petitioner's husband or her son.

any reference to this request in her attorney's June 11, 2021 submission to Morris County. See P-4. As noted by Morris County in its exceptions to the Initial Decision, if Morris County was made aware prior to the deadline set forth in the June 6, 2021 letter, it would have required that all information related to accounts associated with that debit card be provided, as it is unclear whether the name on the debit card was Petitioner's husband or son, who owns the bank accounts associated with the card, the balance in the account, and how the money was used during the look-back period. Without this information, Morris County was unable to determine all assets owned by Petitioner and an eligibility determination could not be made.

Further, Petitioner now argues that a check or deposit slip was not available related to the two \$2,000 transfers noted by Morris County in its June 6, 2021 letter because it was a transfer into Petitioner's bank account from her daughter. Aside from the fact that Petitioner should have been able to provide documentation from her daughter's account to show that an electronic transfer was made from the daughter's account to Petitioner's account, Petitioner failed to advise Morris County in her attorney's June 11, 2021 submission that she could not provide a check or deposit slip because of the source of the transfer. Ibid. Petitioner's June 11, 2021 submission failed to provide any explanation or documentation related to these two transactions or any documentation showing her attempts to obtain supporting documentation. Ibid. Without this verification, Morris County could not assess whether the deposits related to an income source held by Petitioner, and, thus, eligibility could not be determined.

Moreover, Petitioner argues that a copy of the Part D Medicare card was not provided because Petitioner's family states that they do not have an insurance card for Part D coverage. Petitioner additionally argues that she believes that this piece of information is not relevant to determining eligibility. Petitioner acknowledges that a premium for Part D coverage is being withdrawn from her monthly Social Security payment. However, the

documentation Petitioner provided to Morris County in response to its March 9, 2021 request does not show that Petitioner is receiving Part D coverage. See P-1. The March 9, 2021 letter from the Social Security Administration only provides that a premium for medical insurance of \$297 is deducted. It appears from the record that it was not until the present matter that Petitioner provided a November 25, 2020 letter from the Social Security Administration that states that a Part D premium of 89.50 would be deducted from her monthly Social Security payment. Accordingly, Petitioner's contention that a copy of the Part D card was not relevant because Morris County was aware that a Part D premium was being deducted from her benefits is unfounded. I additionally note that whether a requested verification is relevant in determining Petitioner's eligibility is solely Morris County's determination. Yet, no documentation was presented showing Petitioner's attempts to obtain a copy of the insurance card, and Petitioner failed to advise Morris County in her attorney's June 11, 2021 submission that the family did not hold have a copy of the insurance card. See P-4. In fact, Petitioner did not acknowledge this request at all in her attorney's June 11, 2021 submission. Ibid.

In relation to Petitioner's spouse's will, Petitioner advised Morris County in her attorney's June 11, 2021 submission that Petitioner's spouse did have a will; however, the family no longer has a copy of the will. Petitioner failed to supply any other explanation in relation to the will until the present matter where her attorney now states that the spouse's will "was never probated because there were no probate assets-which were controlled by the will" and "the drafting attorney is no longer in practice and could not be contacted." No documentation was presented to Morris County prior to the denial of Petitioner's application that showed any of Petitioner's attempts to obtain a copy of the will. As noted by Morris County, the spouse's will is necessary in order to determine if Petitioner was entitled to any inheritance and the assets held by the deceased spouse. New Jersey law entitles a surviving spouse during his or her lifetime to an elective share of one-third of the decedent spouse's

augmented estate. N.J.S.A. 3B:8-1 to -11. The purpose of the elective share law is to avoid the surviving spouse from being disinherited and not being adequately provided for by the decedent. See McKay v. Estate of McKay, 205 N.J. Super. 609, 618 (Law Div. 1984). See N.J.S.A. 3B:8-1. A “surviving spouse or domestic partner has a right of election to take an elective share of one-third of the augmented estate . . . provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death.” N.J.S.A. 3B:8-1.

For purposes of Medicaid, surviving spouses must avail themselves of assets even when the decedent has sought to exclude access. N.J.A.C.10:71-4.10(a) and (b)3. To that end, the failure to request the elective share or to challenge a will that restricts access to the deceased spouse’s assets is considered a transfer of assets. See I.G. v. DMAHS 386 N.J. Super. 282,289 (App. Div. 2006) (the Appellate Court upheld the finding that the use of such a discretionary trust has the “practical effect’ of forcing the taxpayers of New Jersey to bear the burden of supporting [I.G.] while she resides in the nursing home and receives Medical assistance”); See also Tannler v. DHSS, 211 Wis. 2d 179, 564 N.W.2d 735, 741 (1997); Matter of John G. Faller v. Colorado Dept. of Health Care Policy and Financing, 66 P. 2d 114 (2012 Colo. App.) (finding that elective share assets placed in trust and distributed so as to maintain Medicaid benefits were available to determine eligibility); Matter of Estate of Dionisio v. Westchester County Dept. of Social Servs., 244 App. Div. 2d 483, 665 N.Y.S.2d 904 (1997), leave to appeal denied, 91 N.Y.2d 810 (1998) (Widow's waiver of her marital rights to a portion of her husband's estate was a transfer of resources for purpose of qualifying for medical assistance.); and Matter of Mattei, 169 Misc. 2d 989, 647 N.Y.S.2d 415 (1996) (No functional difference between renunciation of inheritance and non-exercise of right of spousal

election because both are rights of inheritance and assets for Medicaid purposes).

While Petitioner did provide a letter related to the VA income that Petitioner was previously receiving, the letter provided was from 2018 and no updated letter was provided showing that Petitioner did not qualify for continued benefits after the 2018 letter. Moreover, no explanation was provided by Petitioner regarding the status of the payments and whether she was continuing to receive payments from the VA. Although Petitioner and Morris County concede that there were no payments listed on Petitioner's known bank statements after 2018, the fact that there is an unknown account or accounts linked to the aforementioned debit card, raise the consideration that VA benefits were processed into another account owned Petitioner. Accordingly, current documentation was necessary to determine whether Petitioner received VA benefits as an additional income source.

Morris County specifically advised what documentation was necessary in order to process Petitioner's application and determine eligibility. Petitioner, through her representatives, were aware of the verifications and specific documentation required. The aforementioned verifications was not provided by the deadline set forth in Morris County's June 6, 2021 letter, which specifically advised that the failure to provide the requested documentation could result in the denial of Petitioner's application. R-1 at 22. Without that requested documentation, Morris County was unable to make a determination related to Petitioner's eligibility and appropriately denied Petitioner's application. Petitioner, additionally, failed to request any extensions of time to provide the requested documentation and no exceptional circumstances existed in this matter that would have necessitated such an extension.

Accordingly, for the reasons set forth above and those contained in the Initial Decision, I hereby REVERSE the Initial Decision and FIND that Morris County's denial of Petitioner's application was appropriate in this matter

THEREFORE, it is on this 22nd day of APRIL 2022,

ORDERED:

That the Initial Decision is hereby REVERSED.

Gregory Woods

OBO

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