



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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TRENTON, NJ 08625-0712

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Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

M.W.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

ATLANTIC COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 6622-2021

As Assistant Commissioner of 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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is May 23, 2022 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid application that was filed in July 2021 with Atlantic County Board of Social Services (Atlantic County). By notice dated July 16, 2021 that application was denied as Petitioner, who was not sixty-

five years old, was not categorically eligible under the Medicaid program covering Aged, Blind or Disabled (ABD). At that time Atlantic County informed Jannell Thomas, Petitioner's Designated Authorized Representative, to apply through NJ FamilyCare. That application was filled out by Petitioner's daughter and Power of Attorney since Ms. Thomas "does not handle NJ FamilyCare applications" and eligibility was granted as of July 1, 2021. ID at 4. Despite having been granted benefits, Ms. Thomas appealed the denial for eligibility to be approved retroactive to May 2021.

Any request for retroactive benefits is done by the agency who determined eligibility which in this case was the Statewide eligibility determination agency who had granted benefits. N.J.A.C. 10:49-2.9 (a)(2). Ms. Thomas, who declined to file such an application and had Petitioner's POA take those steps, was instructed to follow up with the NJ FamilyCare unit. The POA, who acted for her mother in that application, did not appear at the hearing.

It is undisputed that Petitioner has been found eligible for benefits under NJ FamilyCare that cover nursing home care yet Ms. Thomas seeks another review of Petitioner's eligibility from an agency that did not determine Medicaid. At the time of the July 2021 application, Atlantic County directed Ms. Thomas to NJ FamilyCare eligibility pathway that resulted in a grant of benefits.

Atlantic County did acknowledge that it could have internally transferred the case to process for NJ FamilyCare eligibility. However, the fact remains that Petitioner was found eligible and, instead of following up with NJ FamilyCare regarding the retroactive benefits, Ms. Thomas wants Petitioner, who was under age 65 at the time of application, to go through an ABD application and be reviewed by the Medical Review Team (MRT) to determine if she met the Social Security Administration (SSA) disability determination

in May and June 2021. It appears that Petitioner had applied to SSA for a determination at the time of application. Petitioner turned 65 in October 2021 and would be considered categorically eligible at this point.

At the time Petitioner applied, a disability determination by either the SSA or the MRT may not have been favorable to Petitioner and would have resulted in a denial of eligibility. Moreover, there is a question whether the December 2020 physician's report was provided to Atlantic County in support of the claim that Petitioner was disabled or if that documentation, dated seven months prior to the application, would have resulted in a favorable decision. The Initial Decision found that the report was prepared for an application to be filed in December 2020. P-1 at 9. While Petitioner's DAR denies this, the report is not contemporaneous to the July 2021 application and indicates it was prepared for a December 2020 application.

In an effort to assist Petitioner, Atlantic County pointed Ms. Thomas to NJ FamilyCare as a quicker pathway which could find Petitioner eligible for coverage without a determination that she meet the SSA disability definition or that she owned or transferred resources. 42 C.F.R. § 435.603(g). These factors for the ABD program were, at the time of the application, potential impediments to Medicaid eligibility. Ms. Thomas declined to file the NJ FamilyCare application and instructed Petitioner's POA to handle it. ID at 4. Petitioner was granted eligibility as of July 1, 2021.

The Initial Decision found that Petitioner's application with Atlantic County was appropriately handled. While the matter could have been internally handled, the decision to determine eligibility under NJ FamilyCare was more beneficial to Petitioner's circumstances. The factors to determine ABD eligibility include a disability determination and a review of Petitioner's assets for the last five years which could have rendered her

ineligible. See 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a).

Petitioner's exceptions fail to acknowledge that eligibility was granted and that Petitioner was not at risk of losing benefits when she turned 65 – the age limit for NJ FamilyCare coverage. See 42 CFR § 435.603(j)(2). The Families First Coronavirus Response Act (FFCRA) as well as subsequent legislation provides an increased in the federal share of certain Medicaid spending so long as States meet certain maintenance of eligibility (MOE) requirements that include ensuring continuous coverage for current enrollees. See Public Law 116 - 127 - Families First Coronavirus Response Act. The MOE, which includes a requirement that Medicaid programs keep people continuously enrolled, expires at the end of the month in which the federal Public Health Emergency (PHE) ends. As such Petitioner's eligibility has and will continue until such time the PHE ends when she will be redetermined along with all Medicaid beneficiaries.

Nor is there any merit to the claim that Petitioner is eligible under "a less advantageous program." She has coverage for the same Plan A benefits received by ABD beneficiaries, including nursing home care. Petitioner's concern about the retroactive coverage should be addressed to NJ FamilyCare which her POA, who did not appear at the hearing, may have already done.

THEREFORE, it is on this ^{20th} day of MAY 2022

ORDERED:

That the Initial Decision is hereby ADOPTED.



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