



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 02533-24

AGENCY DKT. NO. N/A

D.G.,

Petitioner,

v.

**ESSEX COUNTY BOARD OF SOCIAL
SERVICES,**

Respondent.

Rachel Zeffren, for petitioner pursuant to N.J.A.C. 1:10B-5.1

AlRaqia Greene, Family Service Worker, for respondent under N.J.A.C. 1:-1-5.4(a)(3)

Record Closed: August 2, 2024

Decided: August 15, 2024

BEFORE **R. TALI EPSTEIN**, ALJ:

STATEMENT OF THE CASE

Respondent (Essex) denied petitioner D.G.'s September 2023 application for Medicaid's Managed Long-Term Services and Supports (MLTSS) program because D.G. failed to provide requested eligibility verifications until submitting a later application in February 2024. Should the denial stand? Yes. An applicant must supply timely verifications establishing eligibility. N.J.A.C. 10:72-2.3(a)–(e).

PROCEDURAL HISTORY

On January 26, 2024, Essex issued a denial letter to D.G. concerning her September 29, 2023 MLTSS Medicaid application, determining that she failed to provide requested information required to determine eligibility in a timely manner. (R-1.)

On February 8, 2024, petitioner appealed the denial.

The Division of Medical Assistance and Health Services (DMAHS) transmitted the case to the Office of Administrative Law (OAL), where it was filed on February 26, 2024, as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

The OAL scheduled the matter for hearing before me on June 25, 2024. At that time, the parties advised that a second application was pending and that an imminent eligibility determination on the subsequent application might moot these proceedings. Accordingly, at the parties' joint request, I agreed to adjourn the hearing to August 1, 2024. On August 1, 2024, the parties advised that the second application was still processing, and petitioner wished to proceed with her appeal of the initial denial. Because petitioner's designated authorized representative (DAR) was not available to testify on the adjourned hearing date, I rescheduled the hearing to the following day and directed the parties to submit any additional materials they wished to be considered before the start of the hearing. On August 2, 2024, I held the hearing and closed the record.

FINDINGS OF FACT

Based on the testimony and my assessment of its credibility, together with the documents submitted and my evaluation of their sufficiency, I **FIND** the following as **FACT**:

D.G. is seventy-seven years of age and resides in a nursing facility in Essex County, New Jersey. Rachel Zeffren (Zeffren) of Senior Planning Services is D.G.'s legal

representative pursuant to a fully executed and witnessed Designation of Authorized Representative Form, dated July 24, 2023. Zeffren was, therefore, duly authorized to submit a Medicaid application for D.G. and advocate on her behalf for Medicaid benefits.

On October 3, 2023, Essex received D.G.'s initial application for MLTSS Medicaid, dated September 29, 2023. On the application, D.G.'s marital status was indicated as divorced.

AlRaqia Greene, a family service worker for the adult Medicaid office at Essex, testified on behalf of respondent. Greene was assigned to D.G.'s case in October 2023. Greene was straightforward in her testimony about the steps taken by Essex in processing D.G.'s initial application and was credible.

Upon Greene's preliminary review of D.G.'s September 29, 2023 application, Greene noted that additional information was required to verify D.G.'s eligibility. Accordingly, on October 6, 2023, Greene issued a Request for Information (RFI) seeking verification of information necessary to determine financial eligibility, residency, property ownership, and other program requirements.¹ (R-1.) Because D.G.'s application indicated that she was divorced, the RFI also requested production of D.G.'s divorce decree.

Zeffren provided certain financial information responsive to the RFI and advised that a divorce decree could not be produced because D.G. was, in fact, not divorced, but separated. Because the MLTSS program does not recognize separation as a form of dissolution of marriage, Greene explained to Zeffren that a spousal waiver must be submitted to, and accepted by, DMAHS in order for an eligibility determination to be made by the State. On November 8, 2023, Greene further notified Zeffren, in writing, to provide "the name, social security number, and DOB, for the spouse. As well as his last known address, and any contact information for any adult children to assist in a request for a spousal waiver." (P-1.) Greene also requested a copy of D.G.'s naturalization certificate

¹ Although MLTSS also requires medical eligibility concerning an individual's need for the level of services requested, no party disputes that D.G. meets that criterion.

because Essex was unable to verify D.G.'s citizenship based on the information provided. (Ibid.)

On November 9, 2023, Zeffren attached a copy of the requested naturalization certificate to an email to Essex in which she identified the spouse's name and that his last known location was "Las Vegas, N.V." (P-1.) Zeffren further noted, "[t]hat is all the information we know about [the absentee spouse]" and "[w]e are not aware of any children." Zeffren's email closed with the statement: "Please let me know if there is anything else we can provide."

At some point thereafter, Zeffren conducted a "Google search" and identified addresses in Las Vegas (and elsewhere) for individuals with the same name as D.G.'s absentee spouse. Notwithstanding Greene's prior request for the spouse's address, Zeffren did not provide the information she obtained through her internet search regarding possible addresses for D.G.'s absentee spouse in Las Vegas.

As a result, Essex was unable to contact the absentee spouse to attempt to obtain his compliance in connection with the determination of D.G.'s eligibility for the MLTSS Medicaid program. Notwithstanding further communications between Greene and Zeffren in which Greene attempted to obtain additional information regarding the absentee spouse, when no further information was forthcoming, on November 17, 2023, Greene submitted the spousal waiver to DMAHS with the limited information provided by Zeffren.

On November 30, 2023, DMAHS advised Essex that it would not honor the request for a spousal waiver because "[t]here is not enough information." (P-2.) By email of same date, Zeffren inquired of Essex, via the WeCare Customer Service portal, "[w]hat information is needed?" (Ibid.) On December 4, 2023, Zeffren sent an email to Greene asking her to "let us know what information is needed?" In a December 5, 2023 email, Greene responded that the State denied the spousal waiver. In follow-on telephone conversations, Greene reasserted that without any of the previously requested information concerning the absentee spouse, there was not enough information for the

State to approve the spousal waiver. However, if further information was obtained, Greene advised Zeffren that a new request for a spousal waiver could be submitted.

On January 11, 2024, Zeffren provided Greene with information relating to a Nevada marriage record for an individual with the same name as the absentee spouse indicating that he married another woman in Nevada, Las Vegas on July 14, 2003. The record raised new questions concerning D.G.'s marital status. On January 18, 2024, Greene advised Zeffren that she should submit a new application and forward the information to the assigned case worker. (R-1.) Greene was unable to proceed further because an adverse action had already been taken, and Essex had closed the case related to D.G.'s September 29, 2023 application.

On January 26, 2024, Essex issued a denial letter regarding D.G.'s September 29, 2023 Medicaid application because D.G. "failed to provide requested information required to determine eligibility in a timely manner." (Ibid.)

On February 27, 2024, D.G. submitted a second application for Medicaid benefits under the MLTSS program. In connection with that application and the request for spousal waiver, Zeffren provided the name and last known address in Las Vegas, Nevada for D.G.'s absentee spouse. (R-1.) That application is currently pending.

DISCUSSION AND CONCLUSIONS OF LAW

Congress created the Medicaid program under Title XIX of the Social Security Act. 42 U.S.C. §§1396 to 1396w. The federal government funds the program that the states administer. Once the state joins the program, it must comply with the Medicaid statute and federal regulations. Harris v. McRae, 448 U.S. 297, 300 (1980). New Jersey participates in Medicaid through the New Jersey Medical Assistance and Health Services Act (Act). N.J.S.A. 30:4D-1 to -19.5.

The Commissioner of the Department of Human Services (DHS) promulgated regulations implementing New Jersey's Medicaid programs to explain each program's scope and procedures, including income and resource eligibility standards. See, e.g.,

N.J.A.C. 10:71-1.1 to -9.5 (Medicaid Only); N.J.A.C. 10:72-1.1 to -9.8 (Special Medicaid Programs); E.S. v. Div. of Med. Assistance and Health Servs., 412 N.J. Super. 340, 347 (App. Div. 2010).

The Act established DMAHS within the DHS to perform the administrative functions concerning Medicaid program participation. Bergen Pines Cnty. Hosp. v. New Jersey Dep't of Human Servs., 96 N.J. 456, 465 (1984); see also N.J.S.A. 30:4D-4, -5.

County welfare agencies (CWA), such as Essex, "assist [DMAHS] in processing applications for Medicaid and determining whether applicants have met the income and resource eligibility standards." Cleary v. Waldman, 959 F. Supp. 222, 229 (D.N.J.1997), aff'd, 167 F.3d 801 (3d Cir.), cert. denied, 528 U.S. 870 (1999). Significantly, an applicant bears the burden of establishing eligibility for Medicaid benefits. D.M. v. Monmouth Cnty. Bd. of Soc. Servs., HMA 6394-06, Initial Decision (April 24, 2007), adopted, Dir. (June 11, 2007), <http://njlaw.rutgers.edu/collections/oal/>. The applicant is the primary source of information regarding eligibility and must cooperate with the agency in securing evidence to corroborate the information provided to support their applications. N.J.A.C. 10:72-1.4(a)(2), N.J.A.C. 10:72-2.3. Further, a CWA must seek verification of questionable information provided by an applicant. N.J.A.C. 10:72-2.3(c).

Under Medicaid Communication No. 22-04, updating Medicaid Communication No. 10-09, and 42 C.F.R. 435.952(c)(2) (2023), if a verification results in a discrepancy, insufficient information, or an error, the CWA will send an RFI letter. The RFI letter will allow the applicant fourteen days to respond. See Medicaid Communication No. 22-04. If the CWA receives no response, it will deny the application for failure to provide information under 42 C.F.R. 435.952(c)(2) (2023). Further, "for denial letters when the individual failed to provide requested information (new applicants only) no further documentation will be accepted by the Agency and the individual will be provided with information to reapply." Ibid.

Still, the regulations governing Medicaid recognize that there may be "exceptional cases" when an applicant cannot produce the required information timely. See e.g., N.J.A.C. 10:71-2.3(c) (permitting extension of time to issue an eligibility determination

when the applicant did not produce information due to exceptional “[c]ircumstances wholly outside the control of both the applicant and CWA”). Yet, at best, an extension is permissible, not required. Ibid.; S.D. v. Div. of Med. Assistance & Health Servs. & Bergen Cnty. Bd. of Soc. Servs., 2013 N.J. Super. Unpub. LEXIS 393 (February 22, 2013); see also J.D. v. Div. of Med. Assistance & Health Servs., HMA 03564-14, Initial Decision (June 26, 2014) <http://njlaw.rutgers.edu/collections/oal/>, adopted, Dir. (July 29, 2014) <https://www.nj.gov/humanservices/providers/rulefees/decisions/> (finding that a guardian’s difficulty in obtaining requested documents because of non-cooperation from the applicant’s family and financial institutions did not constitute extraordinary circumstances).

Here, D.G. argues that her application should not have been denied for failure to provide eligibility verifications because Essex did not tell her what information she needed to provide to obtain a spousal waiver. D.G.’s claim, however, is belied by the facts, as set forth above, which clearly establish that Greene advised Zeffren that a last known address for the absentee spouse was necessary to proceed with the verification process. Further, Zeffren concedes that she did not provide Essex with the address information she obtained following her internet search. Put simply, the record does not support D.G.’s claim that Essex failed to assist her in any way. To the contrary, when D.G. failed to provide address information for her absentee spouse, Greene submitted the request for a spousal waiver to DMAHS without that information. As expected, however, DMAHS denied the spousal waiver. Even after the spousal waiver was denied and the case closed, Greene corresponded with Zeffren and explained to her that D.G. needed to file a new application and submit additional information to the case worker who would be assigned to process the second application. The record establishes, and I **CONCLUDE**, that Greene explained to D.G.’s representative the information that Essex required and that Essex complied with the relevant regulations, including its obligation to assist D.G. in the processing of her Medicaid application. I further **CONCLUDE** that D.G. failed to timely provide the requested and necessary information to verify her eligibility for the MLTSS Medicaid program, and no exceptional circumstances excused her failure. Thus, Essex correctly denied D.G.’s September 29, 2023 application.

Therefore, I **CONCLUDE** that D.G.'s failure to provide verifications to determine her Medicaid eligibility necessitated the denial of her September 29, 2023 application and D.G.'s appeal should be **DISMISSED**.

ORDER

Given my findings of fact and conclusions of law, I **AFFIRM** the January 26, 2024, denial of D.G.'s September 29, 2023 application for MLTSS Medicaid for failure to provide requested verifications, and hereby **DISMISS** D.G.'s appeal.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

August 15, 2024

DATE



R. TALI EPSTEIN, ALJ

Date Record Closed:

August 2, 2024

Date Filed with Agency:

August 15, 2024

Date Sent to Parties:

cc

August 15, 2024

APPENDIX

Witnesses

For Petitioner:

Rachel Zeffren, Designated Authorized Representative for D.G.

For Respondent:

AlRaquia Greene, Family Service Worker, Adult Medicaid Office

Exhibits

For Petitioner:

P-1 Email exchange between WeCare and Rachel Zeffren, dated November 8–9, 2023, including naturalization certificate for D.G.

P-2 Email exchanges between AlRaquia Greene and Rachel Zeffren, dated December 4–5, 2023, and email exchanges between WeCare and Rachel Zeffren, dated November 9, 2023, and November 27–30, 2023.

For Respondent:

R-1 Fair Hearing Packet, including Request for Information (dated 10/6/23), Denial Letter (dated 1/26/24), Spousal Waiver Request Form (dated 11/16/23) and various email correspondence between Respondent and DMAHS and Respondent and Rachel Zeffren.