

matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 12, 2024.

Petitioner, initially through their Designated Authorized Representative (DAR) filed four applications for Medicaid nursing home benefits with the Atlantic County Department of Community Development (Atlantic County). The matter in question concerns Petitioner's third application, which was filed on December 30, 2022. Atlantic County denied Petitioner's application on April 5, 2023, due to failure to provide required verifications pursuant to N.J.A.C. 10:71-2.2 and 24 C.F.R. 435.952. On or about April 25, 2023 an appeal was submitted on behalf of Petitioner by counsel. However, Petitioner passed away on October 26, 2023 and neither Petitioner's DAR nor their counsel informed Atlantic County or the tribunal of Petitioner's death. Atlantic County became aware of Petitioner's death on December 11, 2023. On April 24, 2024 C.L. Petitioner's daughter's was designated as the estate representative. (P-1, Exhibit A & H).

The Initial Decision granted Atlantic County's Motion to Dismiss and ordered the dismissal of Petitioner's appeal. The Initial Decision makes no substantive determination related to the underlying issue of Petitioner's denial for failure to provide requested verifications, and exclusively focuses on the issue of standing, as it appropriately overrides any discussion related to the denial. Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety.

Upon Petitioner's death, the authorization granted to Petitioner's DAR 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(c) (providing that “[t]he power to act as an authorized representative is valid until . . . there is a change in the legal authority upon which the individual or organization’s authority was based.”).

The DAR designation is analogous to a limited POA 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 POA. 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.

In the present matter, the record does not show that an estate was opened or that an administrator was authorized to act on behalf of the estate between October 23, 2023 and April 30, 2024. Specifically, the DAR designation ended upon Petitioner's death, and counsel's authority to act as attorney in this matter also extinguished at that time.

Thus, I FIND that the Initial Decision correctly dismissed the appeal finding that counsel did not have standing to act on behalf of the estate of Petitioner between October 23, 2023 and April 30, 2024 or pursue the actions which were made during that time.

THEREFORE, it is on this 7th day of AUGUST 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services