



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health
Services
P.O. Box 712
Trenton, NJ 08625-0712

SARAH ADELMAN
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

H.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ATLANTIC COUNTY DEPARTMENT
OF FAMILY AND COMMUNITY
DEVELOPMENT

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10450-2023

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 6, 2024, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By a letter dated August 22, 2023, the Atlantic County Department of Family and Community Development (Atlantic County) granted Petitioner's Medicaid application with eligibility as of December 11, 2023 however, a penalty of one hundred and ninety-three (193) days was assessed resulting from a transfer of assets totaling \$74,375 for less than fair market value during the five-year look-back period.

The matter was appealed on September 11, 2023 by Petitioner's Designated Authorized Representative (DAR). Petitioner's DAR form was previously executed by Petitioner's Power of Attorney (POA) on May 18, 2022. Petitioner's DAR then retained counsel. Petitioner passed away in the pendency of the appeal on October 26, 2023.

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 the imposition of a penalty on Petitioner's receipt of Medicaid benefits, and exclusively focuses on the issue of standing, as it appropriately overrides any discussion related to the imposed penalty. 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, there is nothing in the record to support a finding that an estate had been opened and that the administrator of that estate granted any individual or entity, the authority to act on its behalf. Accordingly, I FIND that the DAR designation ended upon Petitioner’s death, and nothing in the record shows that a new authorization from Petitioner’s estate to continue the appeal has been provided. Thus, I FIND that the Initial Decision correctly dismissed the appeal.

THEREFORE, it is on this 14th day of MAY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

OBO JLJ

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