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

M.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES, AND
MONMOUTH COUNTY DIVISION
OF SOCIAL SERVICES,
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 01599-21

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 8, 2024, in accordance with an Order of Extension.

The issue presented here is whether Petitioner's Designated Authorized Representative (DAR) has the authority to pursue the fair hearing on behalf of Petitioner after they passed away while the hearing was pending.

The agency must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency. 42 C.F.R. § 435.923(1).

The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she no longer is acting in such capacity, or there is a change in the legal authority upon which the individual or organization's authority was based. 42 C.F.R. § 435.923(c).

In this case, Petitioner designated A.G. their Power of Attorney (POA) on April 1, 2012. (R-16.) The POA designated M.G. as Petitioner's DAR on May 29, 2019. (R-17.) On January 5, 2021, the Monmouth County Division of Social Services (Monmouth County) found Petitioner eligible for ancillary services effective October 1, 2020, however, due to the imposition of a transfer penalty of \$67,618.50, the institutional level of care would not begin until May 9, 2021. (R-1.) Petitioner, through their DAR, requested a fair hearing. On September 24, 2021, a first hearing was held. ID at 2. The hearing was adjourned and rescheduled several times at Petitioner's request. Ibid. During the August 30, 2022 status conference, Petitioner's DAR reported that Petitioner passed away on August 15, 2022. Ibid. The ALJ asked if the DAR had any documentation reflecting the substitution of Petitioner's estate including new authorizations. Ibid. A new telephone conference was scheduled for April 19, 2024. Ibid.

On March 5, 2024, the Office of Administrative Law (OAL) sent a letter to Monmouth County and to Petitioner's Executor, A.G., requesting DAR's authorization to represent Petitioner's estate. There is no indication in the record that Monmouth County or A.G. responded to the OAL's letter.

The Administrative Law Judge (ALJ) found that the DAR no longer had the necessary authority to continue Petitioner's appeal since that authority expired at the time of Petitioner's death in August 2022. ID at 6. The ALJ relied on L.M. v. Division of Med. Assistance & Health Servs., Dkt. No. A-6014-17T1 April 30, 2020 N.J. Super. Unpub. LEXIS 791 (App. Div. April 30, 2020). In L.M., the Initial Decision found that a DAR lacked authority to act on behalf of a recently deceased petitioner, or their estate relying on N.J.S.A. 46:2B-8.5. The Division of Medical Assistance and Health Services (DMAHS) issued a Final Agency Decision (FAD) adopting the Initial Decision. The FAD was appealed and affirmed by the appellate court.

Based on the record before me, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein by reference. Prior to the death, the DAR acted on behalf of Petitioner. The DAR did not have standing to move forward with this case because the DAR's authority expired upon Petitioner's death, and the Tribunal was not provided documentation showing a representative of Petitioner estate was appointed.

Thus, the DAR did not have the authority to act on behalf of Petitioner after their death.

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