

Petitioner had passed away on August 12, 2023. Ibid. Fink failed to appear for a telephone conference scheduled for March 7, 2024. Ibid. Since that time, Fink has not contacted the OAL, but did previously report to the OAL that they are now “only representing the facility,” and not the Petitioner. Ibid. Fink also reported “no steps have been taken to assign an executor for the estate.” Ibid.

Upon Petitioner’s death, the authorization granted to Fink 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 Fink, or any other individual or entity, the authority to act on its behalf. The Initial Decision dismissed the Petitioner's appeal. ID at 3. The Initial Decision makes no substantive determination related to the underlying issue of denial of nursing-home benefits based on an alleged failure to provide corroboratory evidence necessary to determine eligibility, and exclusively focuses on the issue of standing, as it appropriately overrides any discussion related to the failure to provide. Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same by reference.

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 for failure to appear and lack of standing.

THEREFORE, it is on this 5th day of JULY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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