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Lt. Governor

**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**  
Division of Medical Assistance and Health Services  
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Commissioner

GREGORY WOODS  
Assistant Commissioner

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

M.P.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
MONMOUTH COUNTY DIVISION OF	:	OAL DKT. NO. HMA 04627-23
SOCIAL SERVICES	:	
	:	
RESPONDENT.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the Office of Administrative Law (OAL) case file. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 25, 2024, in accordance with an Order of Extension.

This matter arises from Monmouth County Division of Social Services' (Monmouth County) decision to impose a 140-day transfer penalty. The matter was transmitted to the OAL on May 25, 2023. ID at 2. On February 16, 2024, a telephone conference was conducted and the Petitioner's Designated Authorized Representative, Malky Fink from Elderguide, reported that the Petitioner had passed away on August 12, 2023. Ibid. Fink failed to appear for a telephone conference scheduled for March 7, 2024.

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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 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 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*

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

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*

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Division of Medical Assistance and Health Services