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

M.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

MIDDLESEX COUNTY BOARD :

OF SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 10630-2023

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is June 6, 2024, in accordance with an Order of Extension.

This matter arises from the Middlesex County Board of Social Services' (Middlesex County) September 6, 2023, denial of Petitioner's Medicaid application for failure to provide documentation necessary to determine eligibility. A Fair Hearing was held on

February 16, 2024, and an Initial Decision was entered on March 8, 2024, reversing Middlesex County's denial of Petitioner's application.

Both the County Welfare Agency (CWA) and the applicant have responsibilities with regard to the application process. N.J.A.C. 10:71-2.2. Applicants must complete any forms required by the CWA; assist the CWA in securing evidence that corroborates his or her statements; and promptly report any change affecting his or her circumstances. N.J.A.C. 10:71-2.2(e). The CWA exercises direct responsibility in the application process to inform applicants about the process, eligibility requirements, and their right to a fair hearing; receive applications; assist applicants in exploring their eligibility; make known the appropriate resources and services; assure the prompt accurate submission of data; and promptly notify applicants of eligibility or ineligibility. N.J.A.C. 10:71-2.2(c) and (d). CWAs must determine eligibility for Aged cases within forty-five days and Blind and Disabled cases within ninety days. N.J.A.C. 10:71-2.3(a) and 42 CFR § 435.912. The timeframe may be extended when documented exceptional circumstances arise preventing the processing of the application within the prescribed time limits. N.J.A.C. 10:71-2.3(c). The regulations do not require that the CWA grant an extension beyond the designated time period when the delay is due to circumstances outside the control of both the applicant and the CWA. At best, an extension is permissible. N.J.A.C. 10:71-2.3; S.D. v. DMAHS and Bergen County Board of Social Services, No. A-5911-10 (App. Div. February 22, 2013).

In the present matter, Petitioner, through their attorney, filed a Medicaid application dated March 1, 2023 with Middlesex County. R-1. On March 6, 2023, Middlesex County sent Petitioner a request for information letter, seeking tax returns. ID at 3. On April 3, 2023, Middlesex County sent Petitioner a second request for information letter, seeking a variety of documents. Ibid. On May 5, 2023, Middlesex County sent Petitioner a third

request for information letter, seeking information related to the care of Petitioner. ID at 4. On June 15, 2023, a fourth letter was sent asking for medical records. Ibid. On July 17, 2023, Middlesex County emailed Petitioner a fifth request asking for additional medical records. Ibid. It appears Petitioner substantially complied with each of these requests. ID at 9. On August 14, 2023, Middlesex County sent Petitioner a request for information letter with a deadline of August 28, 2023, seeking the following:

1. Verification of the attached list of deposits into Bank of America checking account #6674. Deposit transactions from this account will need to be verified with the following: Check images for checks deposited, deposit slips for cash deposits along with a written explanation detailing source of funds. *Explanation was submitted on 4/14/23, but verification is needed.
2. TD Ameritrade account no. XXXXX3630 statements for 1/1/2023-2/28/23;
3. Provide credit-card statements for the following accounts verifying the owner; Capital One, Discover, Chase, Chase Freedom, Walmart, Lowes, LL Bean, Victoria's Secret, Bank of America – two cards, Rutgers Federal Credit Union;
4. Provide the five-year history (3/1/2018-2/28/2023) of PayPal account, showing transactions and balances;
5. Verify the type of policy Mid Century Insurance is;
 - a. Life insurance: Current 2023 face value and cash surrender value. Statement also has to include company name, policy number, owner of policy;
 - b. Car insurance: Car insurance bill;
 - c. Health insurance: Copy of premium statement and copy of cards.

ID at 4-5.

The August 14, 2023, request for information included both new and outstanding information. ID at 5. When Middlesex County did not receive a response before the deadline, they denied Petitioner's application on September 6, 2023. Ibid.

The letter brief dated October 26, 2023, submitted prior to the Fair Hearing by the attorney for Petitioner and marked as Exhibit P-1, states that there must have been a delay in the United States Postal Service delivering the mail because the attorney did not receive the August 14, 2023 letter until September 11, 2023. The letter brief goes on to state that counsel contacted the caseworker and Medicaid Supervisor for Middlesex County and Middlesex County declined to rescind the denial. (P-1).

The Initial Decision found that Petitioner did not timely respond to the August 14, 2023 request for information letter but that exceptional circumstances existed under N.J.A.C. 10:71-2.3(c) that required Middlesex County to extend the time limit for Petitioner to respond. ID at 11. In addition to relying on the information provided in Petitioner's letter brief, the Administrative Law Judge (ALJ) states that Petitioner's behavior of substantially complying with the previous request for information letters, along with Petitioner contacting Middlesex County the day after allegedly receiving the new letter, all help prove the letter was delivered late. ID at 10.

The Initial Decision goes on to discuss J.C. v. Morris County Board of Social Services, OAL Dkt. No. HMA 07289-21, Initial Decision (Dec. 1, 2002), adopted, Final Decision (March 3, 2023). In J.C., after a Medicaid application was submitted, Morris County sent J.C. a request for information letter, which J.C. promptly responded to. Morris County then sent a second request for information letter. When there was no response, Morris County denied the application for failure to provide the requested information. At the Fair Hearing, J.C. argued that she did not receive the second request for information letter and therefore should have been given additional time to respond. The ALJ agreed and reversed Morris County's determination. In the Final Agency Decision, the Initial Decision was adopted for the following reasons:

First, Petitioner quickly provided documents in response to the initial request for information. Second, on July 13, 2021, Petitioner inquired as to the status of Petitioner's application. (P-3). There is no evidence on the record that anyone from Morris County responded to Petitioner's inquiry until the denial letter was sent nearly two weeks later. Third, the record shows that Morris County emailed the first request for information to Petitioner's representative. There is no explanation in the record as to why the second request was sent regular mail instead of by email. Finally, the August 3, 2021 denial letter identifies the still outstanding information as those items that were newly requested in the April 29, 2021 letter.

Final Decision at 3.

While this matter and J.C. are similar in that both Counties denied an application for failure to provide requested information after the applicant had previously responded to earlier requests, and that both Petitioners stated there were issues receiving the new request for information letter, a significant difference exists between the two cases. In J.C., Petitioner affirmatively reached out to Morris County before the application was denied to check on the status of the application and Morris County did not respond. Here, based on the letter brief, Petitioner did not reach out to Middlesex County until a week after the application had been denied, when they realized they had missed a deadline.

I FIND that there was no legally competent evidence in the record to support the Administrative Law Judge's findings that exceptional circumstances existed requiring an extension of time. There were no witnesses presented at the Fair Hearing for Petitioner. Additionally, there were no exhibits admitted into evidence during the Fair Hearing related to the August 14, 2023 request for information letter and Petitioner's failure to respond to it. Petitioner's letter brief is an argument in support of Petitioner's legal position. It is not testimony.

Often times when a lack of evidence is discussed in the Administrative Law setting, the residuum rule is referenced. The residuum rule provides that "[n]otwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. 1:1-15.5(b). There was no legally competent evidence presented by Petitioner to establish that exceptional circumstances existed.

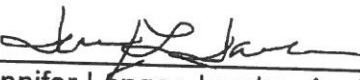
Accordingly, based on the record before me and for the reasons set forth above, I hereby REVERSE the Initial Decision and REMAND the matter to OAL to further develop the record related to the August 14, 2023 request for information letter and the circumstances surrounding Petitioner's failure to respond to it.

THEREFORE, it is on this 6th day of JUNE 2024,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED to OAL for testimony and findings as set forth above.



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