State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. HMA 03012-24
AND HMA 05811-24
AGENCY DKT. NOS. N/A
(CONSOLIDATED)

R.A.,

Petitioner,

v.

MERCER COUNTY BOARD OF SOCIAL SERVICES,

Respondent.

Simon P. Wercberger, Esq., for petitioner (Law Office of Simon P. Wercberger, attorney)

Gregory J. Corcoran, Chief Counsel, Mercer County Board of Social Services, for respondent, pursuant to N.J.A.C. 13:4-1.6

Record Closed: July 19, 2024 Decided: August 5, 2024

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioner R.A. appeals two decisions of respondent Mercer County Board of Social Services (MCBSS) to deny his applications for Medicaid benefits on the grounds that he failed to provide requested information and/or verifications, under 42 C.F.R. § 435.952.[1]

PROCEDURAL HISTORY

Petitioner, through his designated authorized representative (DAR), applied for Medicaid benefits on December 29, 2023. His application was denied by respondent for failure to provide requested information on February 8, 2024. Petitioner requested a fair hearing, and the Division of Medical Assistance and Health Services (DMAHS) transmitted this matter to the Office of Administrative Law (OAL), where it was filed on March 6, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. This matter was docketed as HMA 03012-24, and assigned to me. The hearing, originally scheduled for May 14, 2024, was adjourned at petitioner's request and rescheduled for June 4, 2024.

On March 1, 2024, R.A.'s DAR submitted a second application, which was also denied by respondent for failure to provide requested information, on April 9, 2024. Petitioner requested a fair hearing, and the DMAHS transmitted the second matter to the OAL, where it was filed on May 2, 2024, as a contested case, docketed as HMA 05811-24, and assigned to the Honorable Joan M. Burke, ALJ. This second matter was scheduled for hearing on June 25, 2024.

The parties appeared for the June 4, 2024 fair hearing in HMA 03012-24, and petitioner, through counsel, moved to consolidate this matter with HMA 05811-24. Respondent was unable to respond to the motion, of which it had no prior notice and,

[1] Respondent's action is also supported by N.J.A.C. 10:71-2.2(e).

therefore, a briefing schedule on the motion was set,[2] and a hearing was scheduled for June 19, 2024. (The original hearing date of June 25, 2024, for HMA 05811-24, before Judge Burke, was maintained pending a ruling on the motion to consolidate.)

MOTION TO CONSOLIDATE

N.J.A.C.1:1-17.1(a) provides that any party or the judge may move to consolidate a case that has been transmitted to the OAL with any other contested case involving common questions of fact or law between any parties to the filed case. N.J.A.C. 1:1-17.3(a) sets forth the standards for consolidation, and provides that the judge shall consider:

1. The identity of parties in each of the matters;

2. The nature of all the questions of fact and law respectively involved;

3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;

4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;

5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and

6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

Petitioner seeks consolidation on the grounds that his first application was denied due to his failure to provide statements from two bank accounts held with Capital One

[2] Petitioner objected to a change in the briefing schedule deemed necessary when neither party provided sufficient information regarding the issues in dispute for me to determine whether consolidation was proper. See Reply Br. of Pet'r (June 17, 2024), at 1. That objection was denied.

and Wells Fargo. Though his DAR requested an extension before the deadline, respondent refused and denied the application. Petitioner provided those bank statements with his second application; based on those statements, respondent identified insurance policies not previously disclosed, and other transactions for which petitioner had not provided sufficient explanation. Again, petitioner's DAR requested an extension of the deadline to respond and, again, respondent denied both the extension request and the application.

Consolidation saves time and expense and avoids duplication and inconsistency. Here, both of petitioner's appeals involve the same parties and share similar factual and legal issues. Most important, respondent did not explain how it would be prejudiced by presenting evidence to support both its decisions at one time, in one hearing.

Based on the above, I **CONCLUDED** that the within appeals should be **CONSOLIDATED**. Accordingly, R.A. presented one case against both respondents.

The hearing concluded on June 19, 2024, and the record remained open for post-hearing briefs. After an extension was granted, the parties filed briefs on July 19, 2024, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

At the hearing, petitioner presented the testimony of Shana Ackerman, his DAR, and respondent presented the testimony of Kimberly Weintraub, supervisor with the MCBSS. As petitioner's DAR, Ackerman is **AUTHORIZED** to pursue this appeal and, therefore, I **FIND** that standing is established.

Based on the testimonial and documentary evidence, I **FIND** the following **FACTS** as undisputed:

On December 29, 2023, petitioner applied for Medicaid with respondent. P-1/R-1. By letter dated January 3, 2024, respondent requested information from petitioner, including:

> [B]ank statements for December 2018, March, July and December 2019, March, July and December 2020, March, July and December 2021, March, July and December 2022, March, July and January 1, 2023 through December 31, 2023 for all financial accounts opened or closed within the last 60 months. This includes bank accounts, Direct Express accounts, passbook entries for all accounts, CD's [sic], annuities, stocks and investment accounts.
>
> . . . .
>
> Review all statements before submitting them and provide verification on any large transactions.
>
> [R-2.[3]]

This information was due on or before January 17, 2024. On January 24, 2024, respondent sent petitioner a second request for information (RFI) for specific dated statements from a Wells Fargo account and a Capital One account. R-3. In the RFI, respondent stated:

> Please review the bank statements and provide supporting documentation for all transactions that are repeating and/or over $2000. (checks, receipts, proof of deposits/where they came from, contracts) [sic] If there are transfers to and from any accounts, please provide proof of that accounting including the owner and documentation to explain the reason for the transactions.
>
> [R-3.]

This information was due on or before February 7, 2024. By email dated February 7, 2024, Ackerman requested an extension to respond to the RFI, stating that she had sent requests for statements to Capital One on or about January 24, 2024, and to Wells Fargo on January 31, 2024, but that she had not received responses and that in her experience, Wells Fargo takes fifteen to twenty days to respond. P-3. By email, respondent denied the extension request on the grounds that an extension had already been granted in the form of the second RFI. P-4.

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[3] "Large transactions" was not defined. "Verifying documentation" shows "what the withdraws [sic] or transfers were used for and/or where the deposits came from." R-2.

On February 8, 2024, respondent sent petitioner a notice of denial of Medicaid eligibility for failure "to provide requested information required to determine eligibility in a timely manner." P-2/R-4. Forty-two days had elapsed since the date of petitioner's application.

On March 1, 2024, petitioner submitted his second application for Medicaid with respondent. P-5/R-6. By letter dated March 12, 2024, respondent requested information from petitioner, including the same specific dated statements from the Wells Fargo and Capital One accounts that were first requested on January 24, 2024. R-7; cf. R-3.

This information was due on or before March 26, 2024. By email dated March 25, 2024, Ackerman requested an extension to respond to the RFI as she had "only recently got the statement and [was] waiting back on the transactions." P-7 at 10/R-8. By email dated March 26, 2024, respondent denied the extension request, as the information had been requested during the review of petitioner's first application, but agreed to provide petitioner "with a couple extra days." P-7 at 9. Between March 29 and April 3, 2024, the parties corresponded by email regarding petitioner's Allstate Insurance policy and how petitioner disposed of the car insured under that policy. Id. at 5–8.

On April 9, 2024, respondent sent petitioner a notice of denial of Medicaid eligibility for failure "to provide requested information required to determine eligibility in a timely manner." P-6/R-9. This information included certain Wells Fargo transactions, insurance policies, and the disposal of petitioner's car. Ibid. Forty days had elapsed since the date of petitioner's second application.

LEGAL ANALYSIS AND CONCLUSIONS

Congress created the Medicaid program under Title IX of the Social Security Act, 42 U.S.C. §§ 1396 to 1396w-5. Medicaid is funded by the federal government and administered by the states, including New Jersey. A.K. v. Div. of Med. Assistance & Health Servs., 350 N.J. Super. 175 (App. Div. 2002). Participating states must establish Medicaid eligibility standards that conform to the parameters of the federal statute and the regulations promulgated by the Secretary of Health and Human Services. Wisconsin Dep't of Health & Family Servs. v. Blumer,

534 U.S. 473, 479 (2002). New Jersey participates in Medicaid through the New Jersey Medical Assistance and Health Services Act. N.J.S.A. 30:4D-1 et seq. The Commissioner of the Department of Human Services has promulgated regulations implementing New Jersey's Medicaid Only program to include income and resource eligibility standards. N.J.A.C. 10:71-1.1 to -9.5.

Resource eligibility is based on an examination of "any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his or her support and maintenance. Both liquid and nonliquid resources shall be considered in the determination of eligibility[.]" N.J.A.C. 10:71-4.1(b).

The maximum period normally essential to process a Medicaid application is forty-five days for the aged, and ninety days for the disabled or blind. N.J.A.C. 10:71-2.3(a).[4] It is recognized that there will be situations where the proper processing of the application cannot be completed within the pertinent time limit. N.J.A.C. 10:71-2.3(c). Where substantially reliable evidence of eligibility is still lacking at the end of the designated period, the application may be continued in pending status. N.J.A.C. 10:71-2.3(c). An application may be continued in pending status where a determination has been made to afford the applicant, whose proof of eligibility has been inconclusive, a further opportunity to develop additional evidence of eligibility before final action on his or her application. N.J.A.C. 10:71-2.3(c)(2).

This regulation, N.J.A.C. 10:71-2.3, allows respondent to appropriately reject the Medicaid application of an individual who has the means and capacity to timely complete the application and fails to do so, and gives respondent the discretion to extend regulatory deadlines under exceptional circumstances. Petitioner argues that such exceptional circumstances are found here, as third parties—Wells Fargo and Capital One—controlled access to the needed information and did not respond in a timely manner. Ltr. Br. of Pet'r, at 3 (July 19, 2024). Further, Ackerman attempted to obtain the bank statements, "timely apprising the County of her efforts." Ibid. Respondent, however, argues that Ackerman did not act promptly, waiting a week to contact

[4] Petitioner argues that respondent acted too quickly to deny his applications, forty-two and forty days, respectively, as the regulations only require proof of exceptional circumstances to obtain an extension when the review period exceeds forty-five days. Pet'r's Br. at 4, citing N.J.A.C. 10:71-2.3(a). Petitioner does not support this argument with caselaw; more important, he does not show that he did provide the requested information within the three and five days after the denials were issued.

Wells Fargo even though she knew that the bank could take up to three weeks to respond. Ltr. Br. of Resp't, at 5 (July 19, 2024) (characterizing the banks' delay as typical, rather than exceptional, circumstances).

Petitioner moved for consolidation of his appeals on the grounds that his applications were both denied for failure to provide information about the same bank accounts. Review of the RFIs issued to petitioner for both applications shows that on March 12, 2024, respondent still had not received the bank statements it originally requested on January 24, 2024. Neither before nor after filing the second Medicaid application, up to the day before the second RFI response was due, did petitioner request assistance from respondent, explain the ongoing difficulty he was having in getting information from the respective banks, or request an extension.

Once the bank statements were submitted, respondent found that petitioner had not disclosed information regarding insurance policies and ownership and/or sale of a car. Again, respondent's first request for information regarding large and/or recurring transactions shown in bank statements was made on January 24, 2024. The request was renewed on March 12, 2024. The documentary record includes no correspondence from petitioner regarding these transactions prior to April 9, 2024, when the second application was denied.

Petitioner argues that the agency should have found exceptional circumstances meriting extensions, as the delays in obtaining information were "wholly outside the control" of both parties. See N.J.A.C. 10:71-2.3(c)(4). He cites cases in which such exceptional circumstances were found, but which are distinguishable from this matter. E.M. v. Middlesex Cnty. Bd. of Soc. Servs., HMA 05068-23, Initial Decision (Dec. 8, 2023), aff'd, Final Decision (Jan. 22, 2024) https://njlaw.rutgers.edu/collections/oal/ (extensions warranted when DAR submitted letters delineating efforts, acted promptly to obtain information, used overnight mail for requests to bank, and documented follow-up calls); M.S. v. Middlesex Cnty. Bd. of Soc. Servs., 2024 N.J. AGEN LEXIS 295, Initial Decision (March 8, 2024) (extension warranted when the petitioner, who had responded "expeditiously" to five requests, did not receive sixth request until a month after it was mailed).

I **FIND** that petitioner did not prove by a preponderance of the credible evidence that he timely provided all the required documentation under N.J.A.C. 10:71-2.2(e)

and -2.3(a), nor did he prove that exceptional circumstances exist under N.J.A.C. 10:71-2.3(c); therefore, I **CONCLUDE** that petitioner did not prove by a preponderance of the credible evidence that respondent erred in denying his Medicaid Only applications under N.J.A.C. 10:71-2.2(e).

ORDER

I hereby **ORDER** that the decisions of respondent Mercer County Board of Social Services to deny the applications of petitioner R.A. for Medicaid are **AFFIRMED**, and the appeals of petitioner are **DISMISSED**.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If

you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

August 5, 2024
DATE

TRICIA M. CALIGUIRE, ALJ

Date Filed with Agency: _____

Date Sent to Parties: _____

TMC/kl

APPENDIX

WITNESSES

For petitioner

Shana Ackerman

For respondent

Kimberly Weintraub

EXHIBITS

For petitioner[5]

P-1 NJ FamilyCare Aged, Blind, Disabled Programs, Application, dated December 29, 2023

P-2 NJ FamilyCare Aged, Blind, Disabled Programs, Adverse Action Notice, dated February 8, 2024

P-3 Email from Shana Ackerman to Jennifer Hart, dated February 7, 2024

P-4 Email from Jennifer Hart to Shana Ackerman, dated February 8, 2024

P-5 NJ FamilyCare Aged, Blind, Disabled Programs, Application, dated March 1, 2024

P-6 NJ FamilyCare Aged, Blind, Disabled Programs, Adverse Action Notice, dated April 9, 2024

P-7 Email Correspondence

For Respondent:

[5] Petitioner prepared a packet of exhibits for introduction in the hearing before Judge Burke, in OAL Docket Number HMA 05811-24. Those documents were not introduced at the hearing, but are found in the file for HMA 05811-24

R-1 Same as P-1

R-2 NJ FamilyCare Aged, Blind, Disabled Programs, Request for Information, dated January 3, 2024

R-3 NJ FamilyCare Aged, Blind, Disabled Programs, Adverse Action Notice, dated January 24, 2024

R-4 Same as P-2

R-5 Not Introduced

R-6 Same as P-5

R-7 NJ FamilyCare Aged, Blind, Disabled Programs, Request for Information, dated March 12, 2024

R-8 Same as P-7

R-9 Same as P-6