



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. HMA 14479-24

AGENCY DKT. NO. N/A

**H.R.,**

Petitioner,

v.

**ATLANTIC COUNTY DEPARTMENT  
OF FAMILY AND COMMUNITY  
DEVELOPMENT,**

Respondent.

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**Simon P. Wercberger, Esq., with Eliyahu Pekier, Esq.,** appearing for petitioner  
(Law Offices of Simon P. Wercberger, LLC., attorneys)

**Alysia Remaly,** Assistant County Counsel, appearing for respondent (N. Lynne  
Hughes, County Counsel of Atlantic County, attorney)

Record Closed: May 28, 2025

Decided: June 26, 2025

BEFORE **KATHLEEN M. CALEMMO, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, H.R., appeals the denial of her first application<sup>1</sup> for Medicaid benefits through the NJ FamilyCare Aged, Blind, Disabled Program by respondent, the Atlantic

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<sup>1</sup> After the denial, which is the subject matter of this fair hearing, petitioner filed a second application on August 30, 2024, and a third application on October 31, 2024. Those applications were also denied by the Agency for failure to provide requested information. Petitioner's fourth application filed on January 30, 2025, was still pending as of the date the record closed herein.

County Department of Family and Community Development (Agency). The Agency denied the application because petitioner allegedly failed to produce requested information required to determine eligibility. At issue are transactions that appeared on petitioner's Bank of America statements for account ending in 6456 showing deposits from a Vanguard account. The petitioner maintains that the Agency never specifically requested statements pertaining to a Vanguard account. The petitioner also maintains that such statements were unnecessary because plaintiff provided a self-attestation Medicaid addendum, which negated the need to engage in the five year look-back process.

### **PROCEDURAL HISTORY**

The Agency denied petitioner's Medicaid application on August 20, 2024, for petitioner's failure to provide documentation pertaining to a Vanguard account. Petitioner filed a timely request for a fair hearing with the Division of Medical Assistance and Health Services (DMAHS). DMAHS transmitted the contested case to the Office of Administrative Law (OAL) where it was filed on October 16, 2024, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The first hearing date scheduled for January 31, 2025, was adjourned by petitioner so she could retain counsel. The hearing was held on April 9, 2025. The record remained open to allow the parties to submit summation briefs. After receipt of the last summation brief on May 28, 2025, the record closed.

### **FACTUAL DISCUSSION AND FINDINGS OF FACT**

The following facts are not in dispute and therefore I **FIND** them as **FACT**:

The Agency received petitioner's application for Medicaid on June 27, 2024. The applicant reported no income, no bank accounts, no investments, no properties, and no life insurance policies. (P-1, at 3-4.)

To verify whether the applicant had any financial assets, the Agency electronically searched for banks accounts and other financial resources using the asset verification system (AVS). The AVS search revealed a Bank of America checking account ending in 6456, and a Bank of America savings account ending in 7706. Both accounts were reported closed on December 19, 2022, which was within the five year look back.

On July 9, 2024, the Agency sent a Request for Information (RFI) to petitioner's Designated Authorized Representative (DAR), Sarah Finkle (Finkle) specifically requesting the following documentation by July 23, 2024:

Corrected Self-Attestation Form

LTC-2/ Admission Form showing when client was admitted to Nursing Facility

PNA Statement from date of admission to present

Bank of America Acct ending 6456 – Copies of all available statements from October 2021 to March 2022

Bank of America Acct ending 7706 – Copies of all available statements from July 2021 to September 2021

For all statements requested, be sure to include copies of all checks and non-electronic deposits over \$500. The deposit verification must show exactly where the funds came from that were deposited. Examples of deposit verification are deposit images and check images from the bank\*

\*\*Please note, additional documents may be requested based on documents submitted.\*\*

[R-1, at 15-16.]

On July 23, 2024, Finkle sent a facsimile transmittal sheet (fax) enclosing some of the information requested. Finkle provided the self-attestation form signed by petitioner's guardian, H.B, certifying that H.R.'s monthly income was equal to or below \$1,255 (100% of the Federal Poverty Limit (FPL)) and that she had not transferred any assets or resources for less than fair market value during the "60 month" period prior to "3/1/2024." (P-13.) Finkle provided the Long-Term Care Facility Admission Form (LTC-2) and a letter

from the facility stating that H.R. does not have a PNA account. (P-14 and 15.) Regarding the Bank of America statements, Finkle requested an extension because she had not yet received them. Although Finkle ordered the bank statements, she noted on the fax that under the self-attestation, the bank statements should not be needed for approval. (P-10.)

The Agency granted the extension. On July 29, 2024, the Agency sent a second RFI requesting that the bank statements from the two Bank of America accounts be provided by August 12, 2024. (R-1, at 15-16.) On August 12, 2024, the Agency received a copy of the Bank of America statements for account ending in 6456 showing the following deposits over \$500 from Vanguard (R-1, at 17-20):

1. October 5, 2021 - \$5,000
2. October 27, 2021 - \$5,000
3. November 4, 2021 - \$5,000
4. November 30, 2021 - \$6,000
5. December 1, 2021 - \$5,000
6. December 27, 2021 - \$5,000
7. December 29, 2021 - \$834

On the fax cover sheet, Finkle advised the Agency that she was working on getting the information for all transactions over \$500 and requested another extension. (P-16.)

The Agency denied this extension request. On August 20, 2024, the Agency issued a denial of eligibility notice for failing to provide requested information required to determine eligibility in a timely manner. 42 CFR 435.952.

### **TESTIMONY**

The following is not a verbatim recitation of the testimony, but a summary of pertinent testimony in areas of dispute.

**Mary Lange** is the Administrative Supervisor for the Medicaid Long Term Care Unit. Lange has thirteen years of experience with the Agency, her last two years as a supervisor. Although the application disclosed no income or resources, the AVS revealed two bank accounts, which prompted the first RFI. The Agency requested the statements and required that all deposits over \$500 be verified. The Agency had no information about the existence of a Vanguard account, until petitioner provided copies of statements showing deposits of over \$500 from Vanguard.

Although Finkle requested a second extension when she supplied copies of the Bank of America statements, Lange testified that the Agency has strict time constraints. Here, the first extension was granted but there were no extenuating circumstances to justify Finkle's second extension request. Lange also noted that the Vanguard information was not received by the Agency until April 2025.

On July 23, 2024, the Agency received the self-attestation after having already performed the AVS search.

**Sarah Finkle** is petitioner's DAR. She substantially complied with the first RFI, except for the bank statements, which she ordered. She provided the bank statements to the Agency on August 12, 2024, within the time allowed by the second RFI. Although Finkle referenced that she was working on the verifications for the transactions over \$500, the Agency never sent an RFI specifically requesting information about the Vanguard account.

On the application, Finkle stated that H.R. had no bank accounts. There were no open accounts and Finkle was unaware whether H.R. had any accounts during the look back period. Finkle testified that she attempted to ask the guardian but there was a language barrier. The guardian did not provide her with any financial information for H.R.

Finkle called Vanguard on August 13, 2024, but did not get any information. The guardian also attempted to contact Vanguard but did not receive any information.

### **ADDITIONAL FINDINGS**

Ms. Lange and Ms. Finkle provided credible testimony, explaining their respective duties regarding the application process. Based on the credible testimony and the documentary evidence, I **FIND** the following as additional **FACTS**:

Although the Agency never specifically requested information about the Vanguard account in an RFI, the DAR was on notice from as early as July 9, 2024, that all deposits over \$500 were subject to verification. The DAR understood that she needed to verify the Vanguard deposits because she advised the Agency that she was working on obtaining this information.

The petitioner's income was below 100 percent of the FPL and the guardian self-attested that there were no transfers of any assets or resources for less than fair market value. I take judicial notice that Letters of Guardianship were issued to H.B. by the State of New Jersey Atlantic County Surrogate's Court on March 27, 2023. Under R. 4:86-2(b)(1)(B), H.B. in his application for guardianship was required to include an affidavit or certification of H.R.'s personal estate, including investment accounts, checking, and savings accounts. Finkle testified that she was unable to get any financial information from the guardian. She made no mention of whether she requested the financial information from the guardianship proceeding. In addition, to be accepted a completed self-attestation must be provided with the application. The self-attestation was not provided until July 23, 2024. Under these circumstances, the Agency acted appropriately in processing this application under the look back period.

The DAR requested a second extension because she was attempting to locate information about the Vanguard deposits. However, the DAR did not alert the Agency to any extenuating circumstances that were impeding her ability to obtain this information.

### **LEGAL ANALYSIS AND CONCLUSION**

The Medicaid program is a cooperative federal-state venture, established by Title XIX of the Social Security Act. 42 U.S.C.A. §§1396, et seq. It "is designed to provide

medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services.” L.M. v. Div. of Med. Assistance and Health Servs., 140 N.J. 480, 484 (1995) (quoting Atkins v. Rivera, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458, 91 L. Ed. 2d 131, 137 (1986)); see Mistrick v. Div. of Med. Assistance and Health Servs., 154 N.J. 158, 165 (1998).

Eligibility for Medicaid is governed by regulations adopted in accordance with the authority granted to the DMAHS and the Commissioner of the Department of Human Services. N.J.S.A. 30:4D-7. The DMAHS and Commissioner are required to establish a policy and procedures for the Medicaid application process and shall supervise the operation of, and compliance with, the policy and procedures. N.J.A.C. 10:71-2.2(b).

Medicaid applicants must satisfy certain income and resource eligibility standards. N.J.A.C. 10:71-4.1 to -4.11; N.J.A.C. 10:71-5.1 to -5.9. As part of the application process, an applicant must “[a]ssist the CWA [county welfare agency] in securing evidence that corroborates his or her statements,” including information about the applicant’s income and resources.” N.J.A.C. 10:71-2.2(e)(2). In this regard, “[d]ocumentary sources of evidence present factual information recorded at some previous date by a disinterested party,” including “certificates, legal papers, insurance policies, licenses, bills, receipts, notices of RSDI benefits, and so forth.” N.J.A.C. 10:71-3.1(b)(1). Importantly, “[e]ligibility must be established in relation to each legal requirement to provide a valid basis for granting or denying medical assistance.” N.J.A.C. 10:71-3.1(a).

Generally, an Agency has forty-five days to process an application for those seeking Medicaid eligibility based on age (sixty-five years of age or older). N.J.A.C. 10:71-2.3(a); N.J.A.C. 10:71-2.3(b)(1); N.J.A.C. 10:71-3.9(a)(1). However, the state Medicaid regulations acknowledge that “there will be exceptional cases where the proper processing of an application cannot be completed within the [forty-five-day] period.” N.J.A.C. 10:71-2.3(c).

The Agency may extend the designated period under limited circumstances, including “[a] determination to afford the applicant, whose proof of eligibility has been inconclusive, a further opportunity to develop additional evidence of eligibility before final

action on her application.” Id. An Agency’s decision to extend the application period under such circumstances is discretionary, not mandatory. S.D. v. Div. of Med. Assistance & Health Servs., 2013 N.J. Super. Unpub. LEXIS 393 (App. Div. Feb. 22, 2013); H.R. v. Div. of Med. Assistance & Health Servs., HMA 11078-14, Final Decision (February 2, 2015), <https://www.state.nj.us/humanservices/dmahs/info/fads.html>>.

An applicant whose Medicaid application is denied for failure to provide verification of eligibility in accordance with N.J.A.C. 10:71-2.2(e)(2) may request a fair hearing before the OAL to challenge the agency’s decision. N.J.A.C. 10:49-10.3(b). In such appeals, the main issue is whether the applicant timely provided the agency with sufficient documentation to determine their financial eligibility for Medicaid. However, a review of administrative decisions shows that in cases in which an applicant made a good-faith effort to cooperate with the Agency’s document requests but ultimately failed to do so due to “exceptional circumstances,” such failure may be excused, and the Agency may be ordered to give the applicant more time to provide verifications.

However, in the absence of “exceptional circumstances,” a denial for failure to provide verifications will be upheld even if the applicant or his representative cooperated with the Agency during the application period, especially when the Agency extended the application period.

In the instant matter, the DAR did not seek assistance from the Agency in accessing the Vanguard accounts, nor did she advise the Agency of any problems. She merely requested an extension. Under these circumstances, the DAR did not identify any exceptional circumstances to justify a third extension and extend the application period.

The Agency must verify all factors related to eligibility, including all sources of income and resources. N.J.A.C. 10:72-2.3(a). In the absence of credible verification of all eligibility factors, eligibility for the Medicaid program may not be established. N.J.A.C. 10:72-2.3(e). The bank statements showing transactions totaling \$31,834 from an undisclosed Vanguard account were subject to verification as being transactions over \$500.



Thus, I **CONCLUDE** that the Agency's denial of petitioner's Medicaid application, dated June 27, 2024, for failure to provide documentation verifying the Vanguard transactions over \$500 was appropriate.

**ORDER**

It is **ORDERED** that respondent's denial of H.R.'s Medicaid applications dated June 27, 2024, for failure to provide the required documentation to process the application is **AFFIRMED**, and petitioner's appeal is **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.

*Kathleen M. Calemno*

June 26, 2025

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

**APPENDIX**

**EXHIBITS**

**For petitioner:**

Sarah Finkle, DAR

**For respondent:**

Mary Lange, Administrative Supervisor of the Atlantic County Medicaid Long-term Care Unit

**EXHIBITS**

**For petitioner:**

- P-1 Medicaid Application
- P-2 Response to first RFI
- P-3 Response to second RFI
- P-4 Denial letter
- P-5 Email, dated August 12, 2024, from DAR to case worker
- P-6 Response to subpoena from Vanguard, dated March 31, 2025
- P-7 Vanguard closing letter, dated April 2, 2025
- P-8 Waiver Authority (11-W-00279/2 and 21-W-00068/2)
- P-9 Medicaid Communication 16-01
- P-10 CFR – regulations
- P-11 Medicaid Communication 22-04
- P-12 Regulations and OAL Decisions

**For respondent:**

- R-1 Fair Hearing Packet: Application; Denial notice; RFI, dated July 9, 2024; RFI, dated July 29, 2024; and Medicaid regulations.