



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 02257-24

AGENCY DKT. NO. N/A

J.L.,

Petitioner,

v.

MONMOUTH COUNTY DIVISION

OF SOCIAL SERVICES,

Respondent.

Simon P. Werberger, Esq. appearing for petitioner, (Law Offices of Simon P. Werberger, LLC, attorneys)

Patrick J. Boyle, Esq., appearing for respondent

Record Closed: March 20, 2025

Decided: April 9, 2025

BEFORE **MARY ANN BOGAN, ALJ:**

STATEMENT OF THE CASE

Petitioner, J.L. by his Designated Authorized Representative (DAR), Yaakov Fonteijn of Future Care Consultants appeals the decision of respondent, Monmouth County Division of Social Services (MCDSS or agency), denying eligibility for nursing

home program eligibility on his alleged failure to provide corroboratory evidence in a timely manner necessary to determine eligibility. N.J.A.C. 10:71-2.2(e)(2).

On appeal, the petitioner contends that the evidence shows that the request for information (RFI) was never sent. For the reasons cited below, the petitioner's Medicaid application should be reopened.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) and filed on February 20, 2024, for determination as a contested case. N.J.S.A. 52:14B-1 to -15. The case has a history of adjournments due to witnesses' unavailability. In addition, after it became clear that this hearing was appropriate for an in-person hearing only, the case was rescheduled for an in-person hearing and conducted on March 20, 2025.

Prior to the start of the hearing an oral decision was issued denying petitioner's motion for summary judgment finding material facts in dispute.

STATEMENT OF FACTS

After hearing the testimony and reviewing the documentary evidence I **FIND** the following as **FACT**:

On September 21, 2023, J.L., by his representative, Yaakov Fontejin, filed a Medicaid application with MCDSS on J.L.'s behalf. (R-1.) The application included Direct Express statements for May, June, and July 2023. (R-6.)

Almost, four months later, on January 8, 2024, the agency drafted an RFI request, addressed it to the DAR and placed it in the in-office outgoing mail bin. The RFI contained a request for Direct Express statements from July 7, 2023, to September 2023, and a requested self-attestation letter stating he has no assets or resources that have been transferred in the last sixty months since his only source of income is below the federal

poverty level. The request also sought personal needs assessment (PNA) statements from June 2023 to September 2023. (R-4.)

When no response to the RFI was received from the petitioner, the agency issued the notice of eligibility dated January 24, 2024. A copy of the RFI marking the missing information was attached to the denial notice. (R-2.)

Testimony

Maria Aviles, Human Services Specialist 2, is the caseworker for this Medicaid application, after being assigned the Medicaid application dated September 21, 2023, on January 8, 2024. The caseworker reviewed the documents and generated an RFI requesting information the agency believed to be necessary to determine eligibility. After Aviles generated the RFI she followed the agency's regular mailing procedure and placed the letter in an envelope to be sent regular mail and then placed it into the mail bin located in her office. The caseworker did have further communications with the petitioner. A response to the RFI was not received from the petitioner. Aviles issued an eligibility letter and placed the letter in the mail bin located in her office. She could not explain the agency's delay in processing the application beyond the forty-five-day processing deadline.

Robert Compton, Director of the Department Facilities, mailroom supervisor appeared as a subpoenaed witness. Director Compton is responsible for all mail related to county departments including the Division of Social Services. He explained that after the mail is picked up from the department in-office mail bin it is transported by the mailroom vehicle and brought to the main mailroom, metered and processed for mailing. He explained, the mail is always with a mailroom worker from the time it is transported from a department to the time the letter is mailed.

Sosie Steif is the petitioner's current DAR. She testified the only RFI she received was attached to the letter of eligibility which denied the application. Yaakov Fontejin was the original DAR. She became the petitioner's DAR after Mr. Fontejin.

Shmuel Moore was Fonteijn's supervisor, the DAR for this Medicaid application. Fonteijn informed him that the RFI was never received. This information is also set forth in an email exchange between workers, dated February 1, 2024. (P-1-4.) (Ex. A.)

I **FIND** service of the RFI was not effectuated on the petitioner's DAR.

LEGAL ANALYSIS AND CONCLUSIONS

To qualify for Medicaid in New Jersey, an applicant must provide a county welfare agency (CWA) with documentation verifying her financial eligibility and such verifications must show that the applicant is financially eligible for the program.

First, under N.J.A.C. 10:71-2.2, a Medicaid applicant must provide sufficient information for the CWA to determine her financial eligibility. In this regard, an applicant must "[a]ssist the CWA in securing evidence that corroborates his or her statements" on the application and "[r]eport promptly any change affecting his or her circumstances." N.J.A.C. 10:71-2.2(e).

A CWA also has responsibilities during the application process, including "[a]ssist the applicants in exploring their eligibility for assistance" and "[m]ake known to the applicants the appropriate resources and services both within the agency and the community, and, if necessary, assist in their use." N.J.A.C. 10:71-2.2(c).

According to N.J.A.C. 10:71-2.2, the worker must communicate with the applicant regarding any missing documentation. After that, CWA must provide an opportunity for the applicant to verify supplement or clarify essential information. N.J.A.C. 10:71-2.10.

Generally, CWA must process an application for Medicaid in forty-five days. N.J.A.C. 10:71-2.3. When the complete processing of an application is delayed beyond forty-five days for the aged or ninety days for the blind or disabled, written notification shall be sent to the applicant on or before the expiration of such period, setting forth the specific reasons for the delay. N.J.A.C. 10:71-2.3. But "[w]here substantially reliable

evidence of eligibility is still lacking at the end of the designated period; the application may be continued in pending status” in “exceptional cases.” N.J.A.C. 10:71-2.3(c).

Such exceptional circumstances include the CWA’s “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 his or her application” and “[c]ircumstances wholly outside the control of both the applicant and CWA.” Ibid.

As stated in M.L. v. Essex County Division of Family Assistance and Benefits, 2025 N.J. Super. Unpub. LEXIS 407, the State agencies must “turn square corners” with the public they serve in carrying out their statutory responsibilities. W.V. Pangborne & Co. v. N.J. Dep’t of Transp., 116 N.J. 543, 561-62 (1989), 562 A.2d 222. When this “bedrock principle” is read together with the above regulations, like in M.L. here the agency failed to follow the regulations when evaluating the petitioner’s Medicaid application. The “case worker, [] and the petitioner had a duty under the regulations to take affirmative steps to communicate with each other regarding the [September 21, 2023] pending application. The scope of this joint duty clearly includes the parties’ efforts to clarify prior communications about a pending application.”

Specifically, the agency failed to communicate about the pending application that languished without explanation for almost four months, and did not send written notification to the petitioner informing him of the agency’s delay. Further it has been demonstrated, under these discreet facts, petitioner did not receive notice of the agency’s “claimed deficiencies”. These actions are inconsistent with the rules.

Even more, the agency’s actions caused prejudice to the petitioner, who they identified as an applicant with income below the federal poverty level and further delayed the petitioner’s potential to be established for Medicaid benefits in a timely manner.

I CONCLUDE the petitioner’s September 21, 2023, Medicaid application shall be reinstated. The agency did not demonstrate by a preponderance of evidence that the petitioner failed to provide the documents requested in its request for information to determine eligibility. The agency shall reissue the RFI, verify petitioner’s Medicaid

eligibility, request with specificity any necessary verification documents, and provide a reasonable time for petitioner to submit responsive documents. After that the agency shall make a new eligibility determination for petitioner.

ORDER

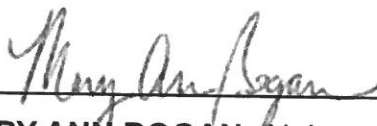
I **ORDER** the Medicaid application shall be returned to the MCDSS to timely process and make a new eligibility determination.

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.

April 9, 2025

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency:

Date Mailed to Parties:

MAB/nn

APPENDIX

WITNESSES

For petitioner

Sosie Steif
Shmuel Moore
Yaakov Fontejin

For respondent

Maria Aviles, Human Services Specialist 2

Subpoena witness

Robert Compton, Director, Department Facilities

EXHIBITS

For petitioner

P-1	Certification of Shmuel Moore ¹
P-2–P-3	Certification of Robert Compton
P-4–P-6	<u>E.G. v. Hudson County Board of Social Services</u> , Final Agency Decision
P-7–P-14	Petitioner's Discovery Demands
P-15–P-16	Subpoena Duces Tecum, MCDFM
P-17	MCDFM Responsibilities
P-18–P-29	<u>M.L. v. Essex County Division of Family Assistance and Benefits</u> ,
P-30	Emails

¹ Respondent objected to the submission of the certification into evidence since S. Moore was not present to testify.

For respondent

- R-1 Application
- R-2 Denial letter
- R-3 Medicaid citations
- R-4 RFI letter mailed to the DAR
- R-5 DAR form
- R-6 Screenshot of portal (documents uploaded)
- R-7 Self-attest form