SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5405-15T2

P.B.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES and ATLANTIC COUNTY BOARD OF SOCIAL SERVICES,

Respondents-Respondents.

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Argued November 28, 2017 – Decided December 8, 2017

Before Judges Fasciale and Sumners.

On appeal from the Division of Medical Assistance and Health Services.

Carl Ahrens Price argued the cause for appellant (Price & Price, LLC, attorneys; Carl Ahrens Price, of counsel and on the briefs).

Jacqueline R. D'Alessandro, Deputy Attorney General, argued the cause for respondent Division of Medical Assistance and Health Services (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Stephen Slocum, Deputy Attorney General, on the brief).

PER CURIAM

P.B., who is now deceased,[1] appeals from a July 14, 2016 final agency decision by the Department of Human Services Division of Medical Assistance and Health Services (DMAHS) concluding that P.B. failed to provide financial verifications after receiving multiple requests from the county welfare agency (CWA). The verifications were required so that DMAHS could determine whether P.B. was eligible for Medicaid.

In September 2014, P.B.'s daughter (the daughter) filed an application for Medicaid on behalf of her mother. Although P.B. lived in Ocean County, the daughter filed the application in Atlantic County. As a courtesy to the daughter, the Atlantic County welfare agency forwarded the application to Ocean County Board of Social Services for processing. Thereafter, the daughter did not attend a scheduled appointment in Ocean County.

In November 2014, the daughter submitted a second application in Atlantic County. The CWA advised the daughter that she needed to provide missing verifications for the application to be processed. It requested information about P.B.'s life insurance policy, statements and check images for bank accounts, and

[1] P.B. passed away in May 2015. We question whether P.B. has standing to bring this appeal because since her passing, the estate did not name an administrator or otherwise designate an individual to proceed on behalf of the estate. Nevertheless, we adjudicate the appeal concluding that P.B.'s contentions lack merit.

verification of P.B.'s lease or rental agreement. The daughter acknowledged that failure to provide bank statements and financial accounts would result in denial of the application.

The CWA made numerous written and oral follow-up requests for the required information. The caseworker corresponded with P.B.'s life insurance company and bank, however, without success. The caseworker also notified the daughter in numerous writings that the agency would deny the application unless she produced the missing verifications. In September 2015, the CWA denied the application.

The daughter appealed, and an Administrative Law Judge (ALJ) conducted a hearing. In April 2016, the ALJ rendered a lengthy written opinion and reversed the CWA's denial of the Medicaid application. The ALJ then remanded the matter to the CWA and directed the parties to "work on acquiring the necessary document[ation]." The ALJ stated that the application must be decided on the merits "unless [the daughter] fails to cooperate, without good cause."

In April 2016, the CWA appealed to the DMAHS. It argued that the record contradicted most of the ALJ's findings and departed from controlling law. The CWA contended that the daughter failed to produce documentation including "lookback statements, deposit verifications, check images, and the cash value of life insurance

. . . despite numerous requests." It maintained that without this information it would be unable to ascertain Medicaid eligibility.

In July 2016, the DMAHS issued its final written decision. The DMAHS rejected the ALJ's sua sponte reliance on equitable doctrines and foreign law. The DMAHS upheld the CWA's denial of the November 2014 application for failure to provide the missing verifications. It concluded the requested information remained missing, and the record contained no credible evidence explaining the failure to produce the documents. In rejecting the ALJ's analysis, the DMAHS stated:

> While there was delay in Atlantic County's handling of the case, [the daughter] did not provide the information necessary to establish Medicaid eligibility. Atlantic County could not process the application[,] as there were still assets and accounts unaccounted for and transactions that needed explanation. [The daughter] had a [power of attorney (POA)], had access to documents that pre-dated Hurricane Sandy and was able to retrieve some information quickly. The records requested in August 2015 are essentially the same as those requested in November 2014 when she applied. Without these records, there is no evidence that [P.B.] was eligible for benefits or that she was not subject to a transfer penalty.

On appeal, P.B. argues the CWA mismanaged the initial application; the CWA failed to provide the daughter with timely assistance; the CWA's failure to assist prejudiced P.B.; and the

CWA did not account for the daughter's diligence and absence of control throughout the application process.

We begin by addressing our standard of review and general governing legal principles. This court's review of DMAHS's determination is limited. Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 210 N.J. Super. 276, 285 (App. Div. 1986), aff'd, 107 N.J. 355 (1987) (explaining that "we must give due deference to the views and regulations of an administrative agency charged with the responsibility of implementing legislative determinations"); see also Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (indicating that "[i]t is settled that [a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled . . . deference") (second alteration in original) (citations omitted).

We have previously stated that "[w]here [an] action of an administrative agency is challenged, a presumption of reasonableness attaches to the action of an administrative agency[,] and the party who challenges the validity of that action has the burden of showing that it was arbitrary, unreasonable or capricious." Barone, supra, 210 N.J. Super. at 285 (citations omitted). "Delegation of authority to an administrative agency

is construed liberally when the agency is concerned with the protection of the health and welfare of the public." Ibid. Thus, this court's task is limited to deciding

> (1) whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 339 (App. Div.) (citation omitted), certif. denied, 200 N.J. 210 (2009).]

The Medicaid program was created when Congress added Title XIX to the Social Security Act, 42 U.S.C.A. §§ 1396 to 1396w-5, "for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." Harris v. McRae, 448 U.S. 297, 301, 100 S. Ct. 2671, 2680, 65 L. Ed. 2d 784, 794 (1980). Participation in the Medicaid program is optional for states; however, "once a State elects to participate, it must comply with the requirements of Title XIX." Ibid. The New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5, authorizes New Jersey's participation in the Medicaid program.

The Commissioner of the New Jersey Department of Human Services has the power to issue regulations dealing with eligibility for medical assistance. N.J.S.A. 30:4D-7. DMAHS is a division of the Department of Human Services that operates the Medicaid program in New Jersey. N.J.S.A. 30:4D-4. Applications for Medicaid benefits are either granted or denied by the CWA. N.J.A.C. 10:71-3.15. Pursuant to this regulation, a CWA must determine "income and resource eligibility." N.J.A.C. 10:71-3.15(a). N.J.A.C. 10:71-4.1(b) defines resource to include

> any real or personal property which is owned by the applicant (or by those persons whose resources are deemed available to him or her, as described in N.J.A.C. 10:71-4.6) and which could be converted to cash to be used for his or her support and maintenance. Both liquid and non[-]liquid resources shall be considered in the determination of eligibility, unless such resources are specifically excluded under the provisions of N.J.A.C. 10:71-4.4(b).

The regulation explains that a resource must be "available" to be considered in determining eligibility. N.J.A.C. 10:71-4.1(c). A resource is "available" when: "1. [t]he person has the right, authority or power to liquidate real or personal property or his or her share of it; 2. [r]esources have been deemed available to the applicant ([pursuant to N.J.A.C. 10:71-4.6]); or 3. [r]esources arising from a third-party claim or action" under certain circumstances. Ibid. The value of the resource is

"defined as the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value)." N.J.A.C. 10:71-4.1(d). The regulation explains that "[t]he CWA shall verify the equity value of resources through appropriate and credible sources." N.J.A.C. 10:71-4.1(d)(3). "Resource eligibility is determined as of the first moment of the first day of each month." N.J.A.C. 10:71-4.1(e).

In delineating the responsibilities in the application process, the regulation states that the applicant is required to "[c]omplete, with assistance from the CWA if needed, any forms required by the CWA as a part of the application process." N.J.A.C. 10:71-2.2(e)(1). Moreover, the applicant is expected to "[a]ssist the CWA in securing evidence that corroborates his or her statements." N.J.A.C. 10:71-2.2(e)(2). "The process of establishing eligibility involves a review of the application for completeness, consistency, and reasonableness." N.J.A.C. 10:71-2.9. Retroactive eligibility for Medicaid is governed by the regulation and allows "outstanding unpaid medical bills incurred within the three month period prior to the month of application" to be compensated upon approval by the agency. N.J.A.C. 10:71-2.16(a).

Finally, and important to this appeal, the regulation notes that "[e]ligibility must be established in relation to each legal requirement to provide a valid basis for granting or denying medical assistance" and that an applicant's statements regarding eligibility are "evidence." N.J.A.C. 10:71-3.1(a), (b). "Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources, either documentary or non[-]documentary." N.J.A.C. 10:71-3.1(b). Thus, these regulations establish that an applicant must provide sufficient documentation to the agency to allow it to determine eligibility and corroborate the claims of the applicant.

Here, the Director of the DMAHS authored an extensive final decision on behalf of the agency. The Director acknowledged that the CWA and an applicant have responsibilities as to the application process. Applicants have the responsibility to complete forms, secure evidence, and report changes. The CWA must inform applicants about the process, eligibility requirements, and their right to a fair hearing. It must also assist applicants in exploring their eligibility. In addition to these responsibilities, the Director offered other examples in the final decision.

The Director noted that the daughter produced some financial information showing deposits and withdrawals of thousands of dollars from a number of accounts. Atlantic County welfare agency required additional information regarding these transactions. The Director explained that the CWA needed verification "to ascertain if eligibility could be established and if there were any transfers of assets."

The Director noted that the ALJ relied on New York cases and sua sponte employed equitable doctrines to remand the matter to the CWA with directions for the production of the missing information. The Director properly concluded that the cases were inapplicable. The New York cases, from 1982 and 1998, pre-dated the more stringent requirements, which restrict the ability to shelter or transfer assets.

The Director found the daughter was able to obtain information as to P.B.'s assets. The Director noted that a POA was available to act on behalf of P.B., before she passed away, and that an estate administrator may have been available thereafter. Moreover, the Director stated that P.B. had another daughter, who was P.B.'s POA and someone who had been actively involved in P.B.'s medical treatment. The Director noted that the other daughter did not appear at the ALJ hearing, or otherwise assist in producing the verifications. The Director mentioned the other daughter

because the record reflected that P.B.'s "accounts had online transfers [in] October and November 2014, indicating [that] someone had the ability and authority to manage [P.B.'s] accounts."

The Director identified mistakes made by the ALJ. For example, P.B.'s husband passed away in January 2014, not May 2015 as found by the ALJ. This is important because the accounts the daughter provided showed that while he was alive, there were large deposits to and withdrawals from those accounts. On May 26, 2011, there was a deposit of more than $20,000, followed by a check made out to P.B. for $9600 the next day.

Furthermore, the Director pointed out that the ALJ's reliance on the doctrine of substantial compliance is misplaced. P.B. and the daughter had failed to show a series of steps to comply with the statutes and regulations, and offered no reasonable explanation as to why there was no strict compliance. The Director explained that there is no credible evidence in the record to show the daughter was unable to produce the verifications due to Hurricane Sandy.

Importantly, the Director stated further that the CWA did not deny Medicaid access to P.B. due to her disability. Rather, the CWA denied the application because it had not received the required documentation. As the Director stated, "[t]o process the application without this information would contravene Medicaid

rules requiring verification of all finances and all statements made on a Medicaid applications."

Applying the governing standards of review and legal principles, we conclude there exists substantial credible evidence in the record to support the Director's findings, and that the final agency decision was not arbitrary, capricious, or unreasonable.

Affirmed.