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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4560-15T2

E.H.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent-Respondent.

Submitted October 19, 2017 – Decided November 3, 2017

Before Judges Simonelli and Haas.

On appeal from the Division of Medical Assistance and Health Services, Docket No. 091007616501.

SB2 Inc., attorneys for appellant (John P. Pendergast, of counsel and on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Lauren S. Kirk, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Petitioner E.H., by her designated authorized representative (DAR), Future Care Consultants (FCC), appeals from the failure of

respondent Division of Medical Assistance and Health Services (DMAHS) to respond to a request to transfer this matter to the Office of Administrative Law (OAL) for a hearing.

Prior to her death in August 2015, E.H. submitted a Medicaid application to the Hudson County Division of Welfare (HCDW), and designated FCC as her DAR. On October 13, 2015, the HCDW denied the application, not because of E.H.'s death, but because she failed to provide her husband's bank records for the five-year look-back period.

On October 29, 2015, FCC submitted to DMAHS a request for a hearing. In a November 5, 2015 letter to FCC, DMAHS did not deny the request; rather, it requested a copy of HCDW's denial notice. The letter also notified FCC that the case would be closed if it did not receive the requested information within thirty days. On November 19, 2015, FCC sent to DMAHS a copy of the HCDW's denial letter.

On January 25, 2016, FCC contacted DMAHS and was advised that because E.H. had died, the fair hearing request would not be granted until the executor of E.H.'s estate signed a DAR form. DMAHS did not confirm this decision in writing.

FCC retained counsel, who notified DMAHS on March 24, 2016 that to his knowledge, there was no federal and State law requiring the executor of E.H.'s estate to sign an additional DAR form to

perfect the appeal on her behalf. Rather, counsel argued that FCC met the federal definition of "Medicaid applicant" in 42 C.F.R. § 400.203. Counsel requested that DMAHS transmit the matter to the OAL for a hearing. DMAHS did not respond. This appeal followed.

As a threshold issue, we first address whether FCC's request for a fair hearing was timely. DMAHS argues the request was untimely because FCC did not provide a copy of HCDW's denial notice until thirty-eight days after the denial was issued. This argument lacks merit.

N.J.A.C. 10:49-10.3(a) provides that a request for a hearing "shall be made in writing within [twenty] days from the date the notice of the agency action giving rise to said complaint or issue." N.J.A.C. 10:49-10.3(b) provides as follows, in pertinent part:

An opportunity for a fair hearing shall be granted to all claimants requesting a hearing because their claims for medical assistance are denied or are not acted upon with reasonable promptness . . . :

1. A request for hearing shall be defined as any clear expression (submitted in writing) by claimants (or someone authorized to act on behalf of claimants) to the effect that they desire the opportunity to present their case to higher authority;

. . . .

3. Claimants shall have [twenty] days from the date of notice of Medicaid Agent or NJ FamilyCare program action in which to request a hearing[.]

N.J.A.C. 10:49-10.3 does not require Medicaid applicant's to provide a copy of the agency's denial notice in a written request for a fair hearing, and DMAHS cites no authority imposing this requirement. Similarly, the federal Medicaid regulation mandating states to provide a fair hearing system does not specify what must be included in a claimant's request for a fair hearing. 42 C.F.R. 431.205. Given that federal and State regulations providing for a fair hearing do not require applicants to include a copy of the agency's denial notice in their request within twenty days of the contested decision, FCC's request for a fair hearing made within sixteen days of HCDW's denial notice was timely.

Furthermore, DMAHS notified FCC that it must provide the denial notice within thirty days of November 5, 2015. In compliance with that deadline, FCC sent DMAHS a copy of HCDW's denial notice fourteen days later on November 19, 2015. Accordingly, we conclude that FCC's request for a fair hearing was timely.

While the parties dispute whether DMAHS actually rendered a final decision in this matter, there is no dispute that FCC did not receive a written final decision from DMAHS or notice of its

right to judicial review, as required by N.J.A.C. 10:49-10.10. Likewise, DMAHS did not notify FCC, in writing, of its decision and FCC's right to request a hearing or seek judicial review, as required by 42 C.F.R. § 431.245(a). According to 42 C.F.R. 431.205, which outlines hearing system requirements, "[t]he hearing system must meet the due process standards set forth in Goldberg v. Kelly, 397 U.S. 254[, 90 S. Ct. 1011, 25 L. Ed. 2d 287] (1970)." In Goldberg, the Supreme Court held that due process in administrative proceedings requires timely and adequate notice and a meaningful opportunity to be heard. Id. at 267-69, 90 S. Ct. at 1020-21, 25 L. Ed. 2d at 299. The Court specified that notice must include the agency's reasons supporting its decision, and an opportunity to be heard, confront witnesses, present arguments, and submit evidence tailored to the applicant's specific capabilities and circumstances. Ibid.

We conclude that DMAHS's January 25, 2016 oral decision, even if deemed a final decision, violated State and federal regulations requiring written notice and notice of a right to seek State agency or judicial review. Accordingly, we reverse the decision, and remand for a hearing before the OAL, at which the issues raised in this appeal shall be addressed. The parties are not precluded from raising additional issues.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

A handwritten signature in black ink, appearing to be 'JMA', is written over the text of the certification.

CLERK OF THE APPELLATE DIVISION