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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-2605-16T3

P.D.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent-Respondent.

Submitted January 31, 2018 – Decided March 14, 2018

Before Judges Koblitz and Manahan.

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

SB2, Inc., attorneys for appellant (Ada Sachter Gallicchio, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Arundhati Mohankumar, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff appeals from the January 20, 2017 final decision of the New Jersey Department of Health, Division of Medical Assistance and Health Services (DMAHS), which adopted the decision

of the Administrative Law Judge (ALJ) affirming the denial of P.D.'s application for Medicaid benefits. P.D., through his representative, applied for Medicaid benefits on August 24, 2015, and died shortly thereafter on September 13.¹ P.D. was responsible for submitting certain financial documentation evidencing his income and financial resources. P.D. failed to submit his Vanguard pension documents and requested bank statements by the due date, in spite of several adjournments. Camden County Board of Social Services (CCBSS) denied P.D.'s Medicaid application. P.D. argues that CCBSS should have allowed more time for P.D. to provide information and assisted P.D.'s representative in obtaining the needed records.

P.D.'s representative attributes his delay in submitting these documents to difficulties that P.D.'s representatives experienced in obtaining the documents after P.D.'s death. P.D.'s counsel argued that pursuant to N.J.A.C. 10:71-2.2(c), CCBSS should have assisted P.D.'s representative, who asked for help.

We review an agency's decision for the limited purpose of determining whether its action was arbitrary, capricious or unreasonable. "An administrative agency's decision will be upheld 'unless there is a clear showing that it is arbitrary, capricious,

¹ Neither party was able to provide us with an accurate assessment of the amount of money involved in this appeal of a three-week loss of Medicaid.

or unreasonable, or that it lacks fair support in the record.'" R.S. v. Div. of Med. Assistance and Health Servs., 434 N.J. Super. 250, 261 (App. Div. 2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "The burden of demonstrating the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 349 (App. Div. 2010) (alteration in original) (quoting In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div.), certif. denied, 188 N.J. 219 (2006)).

"Medicaid is a federally-created, state-implemented program that provides 'medical assistance to the poor at the expense of the public.'" Matter of Estate of Brown, 448 N.J. Super. 252, 256, (App. Div.) (quoting Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004)), certif. denied, In re Estate of Brown, 230 N.J. 393 (2017); see also 42 U.S.C. § 1396-1. To receive federal funding, the State must comply with all federal statutes and regulations. Harris v. McRae, 448 U.S. 297, 301 (1980).

In New Jersey, the Medicaid program is administered by DMAHS pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5. The county welfare boards, such as CCBSS, evaluate eligibility.

One of the objectives of Medicaid is to provide "medical assistance to needy persons who are institutionalized in nursing homes as a result of illness or other incapacity." R.S., 434 N.J. Super. at 258 (quoting M.E.F. v. A.B.F., 393 N.J. Super. 543, 545 (App. Div. 2007)). "DMAHS provides institutional level Medicaid benefits to individuals residing in nursing homes pursuant to the Medicaid Only program, N.J.A.C. 10:71-1.1 to -9.5." Brown, 448 N.J. Super. at 257. "[A]n applicant seeking such benefits must have financial eligibility as determined by the regulations and procedures." Ibid.; see also N.J.A.C. 10:71-1.2(a). "[T]o be financially eligible, the applicant must meet both income and resource standards." Ibid.; N.J.A.C. 10:71-3.15.

Through its regulations, DMAHS establishes "policy and procedures for the application process." N.J.A.C. 10:71-2.2(b). The county welfare boards exercise "direct responsibility in the application process to . . . [r]eceive applications." N.J.A.C. 10:71-2.2(c)(2). The regulations establish timeframes to process an application, with the "date of effective disposition" being the "effective date of the application" where the application has been approved. N.J.A.C. 10:71-2.3(b)(1).

"The process of establishing eligibility involves a review of the application for completeness, consistency, and reasonableness." N.J.A.C. 10:71-2.9. "The maximum period of time

normally essential to process an application for the aged is 45 days." N.J.A.C. 10:71-2.3(a). New Jersey regulations recognize:

there will be exceptional cases where the proper processing of an application cannot be completed within the [45-day] period. Where substantially reliable evidence of eligibility is still lacking at the end of the designated period, the application may be continued in pending status. In each such case, the CWA [(county welfare agency)] shall be prepared to demonstrate that the delay resulted from one of the following:

. . . .

(2) 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 his or her application;

[N.J.A.C. 10:71-2.3(c).]

Here, CCBSS provided P.D.'s authorized representative with a Pending Notice requesting the verification documents, advising that the documentation must be provided by September 25, 2015. When CCBSS did not receive the documentation, it sent a second and final notice, requesting that P.D. submit the documents by October 15, 2015. It was not until October 22, 2015 that P.D.'s representative submitted some of the requested documentation. CCBSS did not deny P.D.'s application until November 5, 2015. It was not until November 9, 2015 that P.D.'s representative provided the 1099 form regarding P.D.'s pension. The requested bank records

were not provided until September 8, 2016, four days before the Fair Hearing.

CCBSS had the discretion, pursuant to N.J.A.C. 10:71-2.3(c), to extend the deadline even further and could have placed P.D.'s application in pending status. CCBSS, however, did not use the forty-five day standard set out in N.J.A.C. 10:71-2.3(a) as a basis for denying eligibility. See 42 C.F.R. § 435.912(g)(2) (2013). Instead, CCBSS gave P.D.'s representative over seventy days² to procure the requested verification documents. CCBSS has the obligation to address Medicaid applications timely. See N.J.A.C. 10:71-2.2(c)(5).

P.D. also contends that CCBSS had the affirmative duty to obtain the Vanguard and bank records by its own efforts. During a Medicaid application process, the CWA, CCBSS here, is responsible for assisting an applicant "in exploring their eligibility for assistance," N.J.A.C. 10:71-2.2(c)(3), and making known to the applicant "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)(4). The applicant must "[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),

² P.D.'s application was submitted August 25, 2015. The initial deadline date was September 25, 2015 and P.D.'s application was ultimately denied on November 5, 2015.

and "[a]ssist the CWA in securing evidence that corroborates his or her statements." N.J.A.C. 10:71-2.2(e)(2). The applicant is "the primary source of information," but the CWA is responsible for making "the determination of eligibility and to use secondary sources when necessary, with the applicant's knowledge and consent." N.J.A.C. 10:71-1.6(a)(2).

"The CWA shall verify the equity value of resources^[3] through appropriate and credible sources. . . . If the applicant's resource statements are questionable, or there is reason to believe the identification of resources is incomplete, the CWA shall verify the applicant's resource statements through one or more third parties." N.J.A.C. 10:71-4.1(d)(3). The applicant is responsible for cooperating fully with the verification process if the CWA has to contact the third-party in reference to verifying resources. N.J.A.C. 10:71-4.1(d)(3)(i). "If necessary, the applicant shall provide written authorization allowing the CWA to secure the appropriate information." Ibid.

N.J.A.C. 10:71-2.10 discusses collateral investigation:

(a) "Collateral investigation" shall refer to contacts with individuals other than members of applicant's immediate household, made with the knowledge and consent of the applicant(s).

³ A resource is "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." N.J.A.C. 10:71-4.1(b).

(b) The primary purpose of collateral contacts is to verify, supplement or clarify essential information.

Here, CCBSS did not attempt to procure the missing documentation. The question, then, becomes whether CCBSS had the burden to procure the requested verification documents. N.J.A.C. 10:71-2.10 does not obligate CCBSS to conduct its own collateral investigation, as P.D. contends. Similarly, nothing in N.J.A.C. 10:71-4.1(d)(3) places a burden on CCBSS to acquire the required verification documents from P.D.'s pension company or bank, but rather states only that if an applicant's identification of resources is incomplete, CCBSS must verify the resource statements through a third party.

Although CCBSS is responsible for assisting an applicant, the regulations did not create an affirmative duty upon CCBSS to procure all documents necessary to complete P.D.'s application, especially when P.D. had a representative.

"An administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." New Jersey Div. of Child Prot. & Permanency v. V.E., 448 N.J. Super. 374, 390 (App. Div. 2017) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)). "Deference to an agency decision is particularly appropriate where interpretation of the Agency's

own regulation is in issue." R.S., 434 N.J. Super. at 261 (quoting I.L. v. N.J. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 389 N.J. Super. 354, 364 (App. Div. 2006)).

Here, the DMAHS rendered its final decision after interpreting its own regulations. We may reverse only upon a showing that the DMAHS acted arbitrarily, capriciously, or unreasonably. Denying an application that did not have the information necessary to verify eligibility after giving several adjournments is not arbitrary, capricious or unreasonable because Medicaid applications must be processed promptly and Medicaid is intended to be a resource of last resort, reserved for those who have a proven financial or medical need for assistance. See N.E. v. N.J. Div. of Med. Assistance & Health Servs., 399 N.J. Super. 566, 572 (App. Div. 2008).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION