

RECORD IMPOUNDED

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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-3452-16T4

V.S.,

Petitioner-Appellant,

v.

DEPARTMENT OF HUMAN SERVICES,
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent-Respondent.

Submitted April 23, 2018 – Decided May 14, 2018

Before Judges Accurso and O'Connor.

On appeal from the New Jersey Department
of Human Services, Division of Medical
Assistance and Health Services, Case No.
1610364717.

Romano & Romano, attorneys for appellant
(Janet B. Romano, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Jacqueline R. D'Alessandro,
Deputy Attorney General, on the brief).

PER CURIAM

V.S. appeals from a February 22, 2017 final decision of the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS) denying his request for a fair hearing because it was filed more than seven months after the notice advising him he had twenty days to request a fair hearing pursuant to N.J.A.C. 10:49-10.3(a). We affirm.

Although the record in this matter is sparse, the following facts are uncontested. V.S. executed a durable power of attorney on June 13, 2015, naming his son, S.S., as his attorney-in-fact. According to his brief, V.S. was a month later transferred to a nursing home, Llanfair House, from an acute care hospital suffering from "altered mental status (AMS) dementia with behavioral disturbance and delirium," and had "been diagnosed with many other medical issues and disorders, including Alzheimer's Disease, unspecified psychosis and anxiety disorder."¹ Counsel asserts that communication with V.S. was

¹ These facts presented in V.S.'s brief are drawn from documents in his appendix not included in the statement of items comprising the record on appeal filed by the agency on July 11, 2017, pursuant to R. 2:5-4, and are thus outside the record we may consider. See Townsend v. Pierre, 221 N.J. 36, 45 n.2 (2015). We include them as background only, as the State, while noting their improper inclusion in the appendix, does not challenge their accuracy for purposes of this appeal. We note, however, that the remedy for any claimed omission in the statement of items is a motion in the agency to correct or supplement the record pursuant to R. 2:5-5, see High Horizons

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further exacerbated because he "only speaks and understands Russian." Upon V.S.'s admission to Llanfair, S.S., acting as V.S.'s attorney-in-fact, executed a New Jersey Medicaid Program Designation of Authorized Representative form designating Windsor Healthcare Management, LLC, as V.S.'s representative for purposes of establishing his eligibility for Medicaid.

Although the application is not in the record, counsel for V.S. asserts in her brief on appeal that "Deborah Ann Condorelli of Llanfair was designated by Llanfair to act on [V.S.'s] behalf to complete and submit a Medicaid application" and did so "in or about August 2015, November 2015 and February 2016."² On November 30, 2015, the Passaic County Board of Social Services sent to "[V.S.] Llanfair House CC," a notice advising of the need for certain additional documents, including proof of total amount paid for his care, any bank transactions over \$1000 and

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Dev. Co. v. N.J. Dep't of Transp., 120 N.J. 40, 44 (1990), not to simply argue the facts petitioner contends were omitted in his appellate brief.

² In addition to not including the application submitted on V.S.'s behalf, counsel also failed to explain the relationship between V.S.'s designated representative, Windsor Healthcare Management, LLC and Llanfair. We note that Condorelli executed V.S.'s designated authorization form as "Authorized Representative," designating her title as "VP Finance."

five years of income tax returns, in order to process V.S.'s "Institutional Medicaid application."

On January 19, 2016, the County Board of Social Services wrote again to "[V.S.] Llanfair House CC," denying his application for Institutional Medicaid because "[y]ou failed to provide the requested information on the second notice sent on 1/5/16. You must provide the property settlement agreement and the information on the caretaker providing services in the Nursing Home. You may reapply." The notice further provided the action was taken pursuant to N.J.A.C. 10:71-2.3(a), and advised of petitioner's right to request a fair hearing within twenty days in accordance with N.J.A.C. 10:49-10.3.

Apparently based on Condorelli's "application . . . on [V.S.'s] behalf in or about . . . February 2016," the County Board of Social Services wrote again to "[V.S.] Llanfair House CC," requesting within 45 days, the "Property Settlement Agreement of the Judgment of Divorce," "Verification of all Transactions over \$1000" and "Caretaker's Names and Tax ID caring for [V.S.] [at] The Nursing Home Facility." On June 15, 2016, the County Board of Social Services wrote again to "[V.S.] Llanfair House CC," advising "[V.S.] was found otherwise eligible for Institutional Medicaid [effective] 11/01/15 but for the transfer of \$516,868.00, which will result in a penalty

period of 1,555 days. Penalty begins 11/01/15 & ends 3/6/2020." The notice advised that V.S. could request a fair hearing within twenty days.

No request for a fair hearing was made within the twenty-day period. Instead, S.S. submitted a Fair Hearing Request to DMAHS over seven months later on February 7, 2017, stating "[t]he quoted 516k is an incorrect amount. We counted all the transfers for 5 year period and came back with a much lower amount. We can show our findings and explain." DMAHS responded to S.S. on February 22, 2017, denying the request as untimely. This appeal followed.

Counsel for petitioner asserts in her brief that because "the notice was addressed to [V.S.], rather than Ms. Condorelli, no one received the notification or was aware of said penalty determination until February 1, 2017, when the notification was emailed to Ms. Condorelli by [a representative] of the Passaic County Board of Social Services." That assertion obviously ignores that all of the other correspondence by the Board was addressed in exactly the same fashion, had not previously impeded Condorelli's communication with the Board on behalf of

V.S., and if in error, was never corrected by her.³ Further, counsel does not address why Condorelli apparently failed for over seven months to make any inquiry of the Board as to the status of the application she filed on petitioner's behalf.

Having reviewed the record, we are satisfied counsel's assertion that the failure to timely request a fair hearing was attributable to the Board's failure to address the transfer penalty letter in a manner other than it addressed all the other correspondence in the file is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Although the record here is not extensive, it makes plain that Condorelli had ongoing communications with the Board of Social Services over several months on V.S.'s behalf, all directed to him at the same address. During that period, she obviously provided the Board with the extensive financial information it requested for the look-back period to permit it to conclude a \$516,868 transfer penalty was required.


³ Because counsel for petitioner did not make the application submitted to the Board on his behalf a part of the record, we cannot conclude the address used by the Board even varied from the one submitted by Condorelli on petitioner's behalf. See Noren v. Heartland Payment Sys., 448 N.J. Super. 486, 500 (App. Div. 2017) (noting the importance of including relevant documents in the appendix to facilitate review).

The regulations providing a twenty-day time period for requesting a fair hearing in the OAL are clear. See N.J.A.C. 10:71-4.10(q) and N.J.A.C. 10:49-10.3(b). Equally clear is that neither Condorelli nor S.S. made a timely request for a fair hearing on V.S.'s behalf. Petitioner has not demonstrated that the error in the address used by the Board here, if there was one, was one caused by the Board.

Because DMAHS's decision that petitioner's request for a fair hearing was untimely is supported by sufficient credible evidence on the record as a whole, R. 2:11-3(e)(1)(D), we affirm.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION