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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1153-21**

ESTATE OF E.W.,

Petitioner-Appellant,

v.

**DIVISION OF MEDICAL
ASSISTANCE AND HEALTH
SERVICES and UNION
COUNTY DIVISION OF
SOCIAL SERVICES,**

Defendants-Respondents.

Submitted January 25, 2023 – Decided July 17, 2023

Before Judges Enright and Bishop-Thompson.

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

Michael Heinemann, attorney for appellant.

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Michael R. Sarno, Deputy Attorney General, on the brief).

Bruce H. Bergen, County Counsel, attorney for Union County Division of Social Services (Steve G. Hockaday, Deputy County Counsel, on the statement in lieu of brief).

PER CURIAM

Plaintiff estate of E.W.¹ appeals from an October 26, 2021 final agency decision of the New Jersey Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), denying plaintiff's Medicaid benefits application because requested verifications were not timely provided to permit the Union County Division of Social Services (UCDSS) to make an eligibility determination. For the following reasons, we vacate the decision and remand for further proceedings.

In a letter dated January 23, 2020, UCDSS denied E.W.'s application for Medicaid benefits because verifications and E.W.'s death certificate were not timely provided as requested by UCDSS. E.W.'s estate requested a fair hearing, and the matter was transferred to the Office of Administrative Law (OAL). The evidence at the hearing before the administrative law judge (ALJ) showed the following.

¹ We use initials to protect the parties' privacy interests.

E.W. was a long-term patient in a skilled nursing facility. On March 18, 2019, a Medicaid benefits application signed by E.W. and her granddaughter, D.W., was filed with the UCDSS. In June 2019, E. W. moved into a new nursing facility.

In May 2019, UCDSS requested additional verification documents from D.W. such as: a copy of E.W.'s pension statement; bank statements from February 2019 through May 2019; and an explanation of how the funds were spent, and the purpose of the expenditures. D.W. was notified that the failure to provide the information within ten days would result in denial of the Medicaid application. Thereafter, on June 13, 2019, E.W. appointed Future Care Consultants (FCC) as her designated authorized representative (DAR) for the purposes of the Medicaid application.

In August 2019, UCDSS notified D.W. the application was still pending because of the missing verifications and information. UCDSS requested bank statements from March 12, 2019, to August 2019 and verification of a checking and savings cash withdrawal on March 13, 2019. In response to the August letter, the DAR produced the bank statements to UCDSS on August 20, 2019.

While E.W.'s application was pending, the assigned UCDSS caseworker died. Sandra Arevalo, the successor UCDSS caseworker, was assigned to E.W.'s case and approximately 300 others sometime in the fall of 2019.

E.W. died on January 4, 2020. The death certificate was issued on January 13, 2022.

Arevalo sent the FCC a letter on January 8, 2020 requesting the following additional information:

- "LTC-2² from the nursing home facility;
- Personal Needs Account (PNA) from the nursing home facility;
- Verification of the type of insurance held, based on monthly payments made from E.W.'s account, and verification of the current face value and cash surrender value of the policy, if applicable;
- Verification of the type of financial plan for which E.W. made monthly payments, and quarterly bank statements for any IRA, annuity, 401K or other type of plan;
- Five years of quarterly bank statements for E.W.'s bank account from 2014 through 2019;
- An explanation of the four withdrawals from E.W.'s savings account made in February 2019 and how the funds were spent; and

² We discern from the record that an LTC-2 is a long-term record used by nursing homes to input client information and dates of admission to the facility.

- An explanation of the two withdrawals in February 2019 and two withdrawals in March 2019 from E.W.'s checking account.
- E.W.'s death certificate.

The notice stated if the requested verifications were not provided within ten days or by January 18, which was a Saturday, the application would be denied.

Also on January 8, the DAR provided a copy of the LTC-2 to Arevalo by email and requested a copy of the pending letter so FCC could obtain the information needed to complete the application. Arevalo did not reply to this communication. Nine days later, the DAR requested an extension from UCDS because she still did not have all the requested documents. Again, Arevalo did not respond. On January 24, 2020, the DAR requested a second extension since she had not obtained the requested documents. Arevalo replied that E.W.'s application was "already denied" and the estate would have to reapply.

At the OAL hearing, DMAHS presented Arevalo as a witness. Arevalo testified E.W.'s bank statements were in the file when she assumed responsibility for the case. She conceded that if she mailed FCC the letter on Wednesday, January 8 2020, then it would not have been received until January 13, with the submission deadline only five days away. Arevalo also acknowledged the first time the agency requested any life insurance information was in the January 8 letter. Additionally, Arevalo testified the application was not denied until

January 23, 2020, but she did not advise FCC in the e-mail of the January 23 effective date.

E.W.'s estate presented the DAR's testimony. The DAR testified FCC was unable to obtain all the documents requested by UCDSS by January 18, ten days after the January 8 letter. The DAR stated that it would have taken at least a week to provide the documents, and E.W.'s death further delayed FCC's efforts.

The ALJ issued a written initial decision recommending the reversal of the denial of E.W.'s application and remanding to the UCDSS for a review of the application on the merits. The judge found the DAR produced various bank statements by August 2019, the initial caseworker died shortly thereafter, and Arevalo inherited "hundreds of other cases." The judge determined "[a]s a result of those circumstances beyond either party's control, this file was not reviewed, and a supplemental information request did not issue until January 8, 2020."

The ALJ also noted that it was not until UCDSS's January 8 letter that it first requested verification of E.W.'s life insurance policy and her death certificate. The ALJ found the DAR demonstrated good faith and timely requested an extension after E.W.'s death and receipt of January 8 letter. The judge also found good cause in the five-month delay in requesting the life insurance information; however, the delay should have "inured to the benefit"

of E.W. The judge concluded "it was unreasonable and arbitrary for the agency to not have granted the one and only request for an extension under all of these pretty unique circumstances."

DMAHS issued its final agency decision on October 26, 2021, and disagreed with the ALJ "that an extension of time to provide the requested documentation was necessary." DMAHS stated "there [was] nothing in the record to support a finding that the death of a UCDSS caseworker, the subsequent delay in reviewing E.W.'s application, or E.W.'s death "should have delayed the timely submission of the requested documentation." The agency explained D.W. and the DAR failed to show these circumstances resulted in their inability to provide the outstanding requested documents when the application was denied, considering the documentation was either previously requested, or in their control prior to the denial of E.W.'s application. Accordingly, DMAHS determined there were no exceptional circumstances "that would have necessitated an extension of time to provide the requested documentation" and reversed the ALJ's initial decision.

On appeal, E.W.'s estate contends UCDSS's refusal to grant an extension of time was arbitrary, capricious, and unreasonable.

A court's review of an agency's determinations is limited. Allstars Auto Grp., Inc. v. N. J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "We review a decision made by an administrative agency entrusted to apply and enforce a statutory scheme under an enhanced deferential standard." E. Bay Drywall, LLC v. Dep't of Lab. & Workforce Dev., 251 N.J. 477, 493 (2022). An agency determination on the merits "will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo, 206 N.J. at 27). "In administrative law, the overarching informative principle guiding appellate review requires that courts defer to the specialized or technical expertise of the agency charged with administration of a regulatory system." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). The burden of demonstrating arbitrary, capricious, or unreasonable agency action rests on the party opposing the agency's action. See E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 349 (App. Div. 2010).

New Jersey participates in the federal Medicaid program under the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5.

In New Jersey, eligibility for Medicaid is determined by the Commissioner of the Department of Human Services. See N.J.S.A. 30:4D-7. DMAHS is the agency within the Department of Human Services that administers the Medicaid program, N.J.S.A. 30:4D-5; N.J.A.C. 10:49-1.1(a) and is responsible for safeguarding the interests of the New Jersey Medicaid program and its beneficiaries, N.J.A.C. 10:49-11.1(b).

UCDSS, the county welfare agency, evaluates Medicaid eligibility. N.J.S.A. 30:4D-7a; N.J.A.C. 10:71-2.2(a); N.J.A.C. 10:71-3.15. Eligibility must be established based on the legal requirements of the program. N.J.A.C. 10:71-3.15. Thus, UCDSS is required to verify the equity value of resources through appropriate and credible sources. If an applicant's resource statements are questionable or the identification of resources is incomplete, "the [county welfare agency] shall verify the applicant's resource statements through one or more third parties." N.J.A.C. 10:71-4.1(d)(3).

Additionally, county welfare agencies review Medicaid applications "for completeness, consistency, and reasonableness." N.J.A.C. 10:71-2.9. Applicants must provide verifications that are identified, and "[a]ssist the [county welfare agency] in securing evidence that corroborates his or her statements." N.J.A.C. 10:71-2.2(e)(2).

Here, DMAHS's decision reversing the ALJ's initial decision is based on a finding that D.W. and the DAR failed to timely produce verifications requested before E.W.'s death that were either in their possession or under their control. As noted, however, the "pretty unique circumstances" in the record show otherwise. Here, with each request from UCDSS, D.W. or the DAR were asked to provide new verifications. Moreover, the January 8 request provided the DAR with limited time to respond, considering when it would have been received, and the fact E.W.'s death on January 4 hindered the DAR's ability to timely obtain documents.

Based on these facts, we are persuaded DMAHS mistakenly concluded there were no "exceptional circumstances" which would have permitted an extension of time for the DAR to produce the requested verification. In fact, as the ALJ observed, an extension was warranted because of "those circumstances beyond either party's control"; namely, the death of the UCDSS employee assigned to E.W.'s file, the ensuing delay in the successor caseworker reviewing E.W.'s file before UCDSS submitted a supplemental request for verification, and E.W.'s death.

Because the final agency decision improperly discounted these facts, we conclude it was arbitrary, capricious, and unreasonable. See In re Stallworth,

208 N.J. 182, 194 (2011) (finding an agency's action is arbitrary, capricious, or unreasonable when the record does not contain substantial evidence supporting a finding upon which the agency's decision is based). Accordingly, we vacate the decision and remand for further proceedings. On remand, the Estate shall produce any documents that were previously requested if it has not already done so. The Director shall consider the presented evidence to determine E.W.'s eligibility, and make the findings required by N.J.S.A. 52:14B-10(c).

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION