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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2284-21

D.D.,<sup>1</sup>

Petitioner-Appellant,

v.

ATLANTIC COUNTY  
BOARD OF SOCIAL  
SERVICES,

Respondent-Respondent.

Submitted May 24, 2023 – Decided June 13, 2023

Before Judges Currier and Mayer.

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

William T. Lawson, III, attorney for petitioner.

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raska, Assistant Attorney General, of counsel; Mark D. McNally, Deputy Attorney General, on the brief).

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<sup>1</sup> D.D. passed away during this matter. Her estate is the petitioner for purposes of this appeal.

## PER CURIAM

Petitioner W.B., the executor of the Estate of D.D. (Dee)<sup>2</sup> and Dee's surviving daughter, appeals from a February 28, 2022 final agency decision by the Division of Medical Assistance and Health Services (Division) denying her request to reinstate Dee's appeal of a Medicaid transfer penalty. For the reasons that follow, the Division's denial of petitioner's request was arbitrary, capricious, and unreasonable under the facts of record in this matter. Thus, we remand to the Division to reinstate the matter and transfer the file to the Office of Administrative Law (OAL) to schedule a fair hearing.

From June 2012 until the time of her death in March 2020, Dee was a resident at Seashore Gardens Living Center (Seashore Gardens), a nursing facility. On November 29, 2018, the Atlantic County Medicaid Long Term Care Unit advised Dee's then counsel, Benjamin T. Branche, that Dee would be eligible for Long Term Care Medicaid effective on June 24, 2022, following a 1515-day penalty period of ineligibility for receipt of benefits due to Dee's transfer of \$521,153.56 in assets.

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<sup>2</sup> We use a pseudonym when referring to D.D. for the reader's convenience.

On December 7, 2018, Branche requested a fair hearing to contest the transfer penalty. The matter was transmitted to the OAL and assigned to an administrative law judge (ALJ). The ALJ scheduled a hearing for February 8, 2019. Two days before the hearing, Branche requested an adjournment, which the ALJ granted. The ALJ rescheduled the hearing for March 15, but for reasons not included in the record, the hearing did not take place.

On March 18, 2019, the ALJ's staff member sent an email notification to all counsel scheduling a court-initiated telephone status conference for 3:30 p.m. on April 11. The ALJ and counsel for the Atlantic County Board of Social Services (Board) participated in the telephone conference. However, Branche did not join at the designated time. At 3:34 p.m. that day, Branche sent an email to the ALJ's staff member, stating "I missed the call. Is there a number I can call into?"

On April 16, the ALJ's staff member sent an email to all counsel inquiring about the status of the matter "[a]s Mr. Branche did not participate in the [April 11] call." In the email, counsel were requested to "provide a response at [their] earliest convenience."

In an April 17 email, Branche took "offense" to the staff member's statement in the April 16 email that he did not participate in the conference. He explained:

I made myself available to participate before the allotted time, and I was available at the specific time. Unfortunately, I was not permitted to participate, despite making every effort to do so. The process utilized to coordinate a conference call was inefficient, and I was unable to get on the call for reasons beyond my control.

In the same email, Branche requested the ALJ schedule a hearing. The Board's counsel sent a reply email that day, concurring "that a hearing will be necessary for this matter." The ALJ's staff member was copied on these emails.

In a document maintained in the Division's file, produced in response to a subpoena issued in a debt collection action between Seashore Gardens and Dee,<sup>3</sup> there was a handwritten notation on the April 17 email that was likely written by the ALJ's staff member who received counsel's replies to the April 16 email. While the handwriting is difficult to read, it appeared to state, "return file to [indecipherable] docket." Consistent with the requests from counsel to schedule

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<sup>3</sup> Hebrew Old Age Center of Atlantic City t/a Seashore Gardens Living Center v. [D.D.] and [W.B.], J/S/A, Docket No. ATL-L-721-20 (debt collection action).

a hearing, the notation suggested the matter was to be returned to the ALJ's docket for a hearing.

On May 2, 2019, Dee's file, stamped "withdrawa[1]"<sup>4</sup> was returned to the Division. The document in the record, purporting to withdraw Dee's appeal, was cut off and contained a handwritten notation which was illegible. There is no information in the record, or on the face of the document, identifying the party withdrawing the matter. Without any additional information and absent a complete and accurate copy of this document, we are unable to ascertain who withdrew the matter and why the file was returned to the Division.

Dee died on March 10, 2020. Just before her death, Seashore Gardens filed the debt collection action against Dee and her daughter as power of attorney. Petitioner's receipt of the debt collection action in late 2020 prompted her to retain counsel.

On February 5, 2021, petitioner's attorney contacted the OAL asking about the status of Dee's fair hearing. The OAL informed counsel the file was closed in May 2019 and returned to the Division.

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<sup>4</sup> Only the letters "withdrawa" appeared as part of a stamped notation. The last letter "a" on the stamped mark was only partially legible.

On August 23, 2021, after reviewing documents produced by the Division in response to a June 2021 court order in the debt collection action, petitioner's attorney requested the Division reinstate Dee's appeal and retransmit the matter to the OAL "to litigate the merits of the appeal of the denial of [Medicaid] benefits." Counsel asserted his "client and her counsel [Branche] have both assured me that the matter was never withdrawn by either of them."

In October 2021, the Division advised that "to retransmit the case that has been closed for two years," petitioner "need[ed] to demonstrate good cause." The Division requested counsel address petitioner's standing because Dee died and there was no filed substitution on behalf of her estate. The Division also asked petitioner's counsel to:

provide an explanation from yourself and prior counsel regarding the dates of representation and the steps taken to prosecute the OAL matter. You stated in your Certification dated September 27, 2021 that your client, [petitioner], was awaiting a hearing date. From May 2019 until [February] 2021 when you first contacted the OAL, and then this office, there appears to have been no communication from [Dee]'s representatives regarding the OAL matter. When did [petitioner] contact Mr. Branche about the OAL matter? Did Mr. Branche contact the OAL about the status of the case on what he considered a pending matter? As the basis of his representation changed in March 2020 due to [Dee]'s death, Mr. Branche should provide any notice sent to the court regarding the change in representation

as well as other requests to have the matter set down for hearing.

The Division requested responses to these questions "and any other proof to demonstrate good cause as to why the case should be reinstated" no later than October 27, 2021. It also asked counsel to forward a copy of petitioner's responses to the Board's counsel.

In a November 1, 2021 letter, petitioner's counsel advised: (1) "Both Mr. Branche and [petitioner] were told that they were awaiting a rehearing date"; (2) only upon obtaining a court order dated June 25, 2021 in the debt collection action did he "obtain the OAL file and ascertain that contrary to [the] file having been marked 'withdrawn,' neither Mr. Branche nor [petitioner], nor anyone on behalf of the [petitioner] had requested that the matter be withdrawn"; and (3) "[d]ue to the [COVID-19] emergency declared in New Jersey, the [petitioner] believed that the matter was awaiting another listing, and had been delayed by said emergency." The letter did not address the questions in the Division's October 2021 letter.

In a February 8, 2022 letter, petitioner's counsel provided a "Short Certificate dated January 22, 2022, naming [petitioner] as the executor of [Dee]'s Estate." This letter also failed to respond to the Division's questions addressing petitioner's good cause for reinstatement of Dee's appeal.

In a February 28, 2022 letter, the Division denied petitioner's request to reinstate the matter, finding she failed to present "good cause to transmit this matter at this late date." Because petitioner's attorney was "not counsel in the OAL matter," the Division explained it needed information about "what steps either [petitioner] or Mr. Branche took to prosecute what they believed was an active OAL hearing." The Division found petitioner did not provide any information to support her belief that the OAL matter remained pending. The Division wrote:

In March 2020, two events occurred that should have caused Mr. Branche or [petitioner] to inquire as to the OAL matter. [Dee]'s passing that month changed Mr. Branche's representation and would have required notice to the OAL of the substitution of the estate. The filing of the debt collection action by [Seashore Gardens] that same month specifically references the November 29, 2018 transfer penalty notice that was appealed by Mr. Branche. Requesting the status of the OAL matter at this point may have supported their contention that they believed the hearing was still pending. This did not occur.

Additionally, the Division found petitioner's position that she assumed the COVID-19 emergency delayed the hearing was "belied by the fact that the last OAL matter was listed in April 2019[,] some eleven months prior to the shutdown." Further, the Division explained that during the pandemic, "the OAL continued to process and schedule fair hearings with minimal disruption."



On appeal, petitioner argues neither she nor her counsel requested the matter be withdrawn and therefore the OAL or the Division improperly marked the file as withdrawn. If the matter was properly withdrawn, petitioner argues in the alternative that the appeal "should be reinstated as there was no adjudication on the merits and no prejudice would inure to the administrative agency."

Our review of an administrative agency decision is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009). We "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field.'" Id. at 10 (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)).

An agency's decision should not be disturbed "unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). The burden rests on the challenging party to demonstrate the administrative agency's action was arbitrary, capricious, or unreasonable. In re Arenas, 485 N.J. Super. 440, 443-44 (App. Div. 2006)

(citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)).

Although we must defer to an agency's expertise and superior knowledge in a particular field, we "need not defer to an agency's determination of a question of law not inextricably related to the agency's expertise[.]" Steinmann v. State, Dep't of Treasury, 116 N.J. 564, 576 (1989). "When an agency's decision is manifestly mistaken . . . the interests of justice authorize a reviewing court to shed its traditional deference to agency decisions." P.F. v. N.J. Div. of Developmental Disabilities, 139 N.J. 522, 530 (1995).

We are satisfied the interests of justice warrant the reopening of Dee's appeal of the Medicaid transfer penalty. As our Supreme Court has held, "[t]he power to reopen a proceeding 'may be invoked by administrative agencies to serve the ends of justice and the policy of the law.'" Minisavage v. Bd. of Trs., Teachers' Pension & Annuity Fund, 240 N.J. 103, 107-08 (2019) (quoting In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006)). To reopen an agency proceeding, the requesting party must demonstrate "good cause, reasonable grounds, and reasonable diligence." Id. at 109.

Here, the Division produced no information regarding the withdrawal of Dee's appeal. Petitioner's counsel advised the Division that neither petitioner

nor Branche withdrew the appeal. The Division then sidestepped the question of who requested withdrawal of the matter and returned the file to the Division. The documents produced in the appellate appendix offered no information to resolve that question.

From the record, we know that on April 17, 2019, Branche and the Board's counsel agreed Dee's appeal required the scheduling of a fair hearing before the ALJ. However, no fair hearing was scheduled. Instead, on May 2, 2019, the OAL inexplicably marked the matter withdrawn without any notice to Dee, petitioner, or Branche.

It is clear both counsel informed the OAL that the matter required the scheduling of a hearing. The emails from counsel requesting a hearing were transmitted to the ALJ's staff member. Someone from the ALJ's staff presumably made the notation on a copy of that email exchange, indicating "return file to [indecipherable] docket." Thereafter, the OAL returned the file to the Division stamped "withdrawa."

Under N.J.A.C. 10:71-8.4(a), when an application for Medicaid benefits is denied, "[i]t is the right of every applicant . . . to be afforded an opportunity for a fair hearing . . . ." Applicants have the right to a fair hearing when "their


claims . . . are denied or not acted upon with reasonable promptness[.]" N.J.A.C. 10:49-10.3(b).

We are satisfied the Division's denial of petitioner's request to reopen the matter and schedule a fair hearing was arbitrary, capricious, and unreasonable. Dee's attorney timely requested a fair hearing. The Board's attorney agreed a fair hearing was necessary and also requested the scheduling of a hearing. For reasons unclear in this record, no fair hearing occurred. It is clear there were missteps in this matter, resulting in the failure to proceed with the fair hearing. The missteps were not attributable to Dee and demonstrated good cause to reopen her appeal.

Based on the limited information in the record, the interests of justice weigh in favor of reopening Dee's appeal. We remand the matter to the Division and direct it to reopen Dee's appeal and retransmit the matter to the OAL to proceed with a fair hearing. We take no position on the outcome of that hearing.

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.

  
CLERK OF THE APPELLATE DIVISION