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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-2815-16T4

W.S.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES and
ATLANTIC COUNTY BOARD OF
SOCIAL SERVICES,

Respondents-Respondents.

Submitted February 28, 2018 – Decided March 20, 2018

Before Judges Manahan and Suter.

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

Cowart Dizzia, LLP, attorneys for appellant
(Lycette Nelson, on the briefs).

Gurbir S. Grewal, Attorney General, attorney
for respondent Division of Medical Assistance
and Health Services (Melissa H. Raksa,
Assistant Attorney General, of counsel; Angela
Juneau Bezer, Deputy Attorney General, on the
brief).

PER CURIAM

W.S. appeals from the January 17, 2017 final decision of the New Jersey Department of Human Services, Division of Medical Assistance and Health Services (DMAHS). A fair hearing was held before the Administrative Law Judge (ALJ), who, in his initial decision, reversed the Atlantic County Board of Social Services' (ACBSS) denial of W.S.'s Medicaid application. ACBSS filed exceptions to the ALJ's decision. The Director of the DMAHS, reversed the ALJ's decision and entered a final agency decision upholding the denial of W.S.'s Medicaid application. In essence, the Director held that despite given the opportunity to provide financial documents necessary for a determination of eligibility for Medicaid benefits, the documents were not provided.

W.S. argues that ACBSS should have allowed more time to provide the information and should have provided assistance in obtaining the information. We conclude that controlling law compels us to affirm.

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, 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. 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 ACBSS, 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 [forty-five] 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).]

This was the fourth application by W.S. for Medicaid. The applications were filed by Hammonton Center as his "Authorized Representative" (AR) of W.S. Prior applications were submitted in February, May and November, 2015. The instant application was received on February 1, 2016 and was denied for failure to provide information needed to make a determination on June 21, 2016. At the time of the denial, bank statements from an ING Direct account remained outstanding. Statements from this account were requested by ACBSS commencing with the first application.

On April 27, 2016, an ACBSS caseworker acknowledged receipt of a fax from the AR's attorney, which informed the ACBSS that it had not obtained the requested documents. The caseworker advised

the AR that the documentation was necessary to make an eligibility determination and suggested searching for the documents with the financial institution by using the wife's account number.

On June 2, 2016, the caseworker sent the AR a letter stating that the application would be denied on June 20, 2016, if the account statements were not provided by that date. On June 20, 2016, the attorney for the AR sent an email to the caseworker requesting an extension because they still had not obtained the records. The request was denied and the application was denied on June 21, 2016.

ACBSS had the discretion, pursuant to N.J.A.C. 10:71-2.3(c), to extend the deadline even further and could have placed W.S.'s application in pending status. ACBSS, 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, ACBSS gave the AR one-hundred-eighty days to procure the requested verification documents. ACBSS has the obligation to address Medicaid applications timely. See N.J.A.C. 10:71-2.2(c)(5).

During a Medicaid application process, the CWA, ACBSS 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), 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 resources¹ 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

¹ 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).

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).

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

Here, ACBSS did not attempt to procure the missing documentation. However, nothing in N.J.A.C. 10:71-4.1(d)(3) places a burden on ACBSS to acquire the required documents, but rather states only that if an applicant's identification of resources is incomplete, ACBSS must verify the resource statements through a third party. Although ACBSS is responsible for assisting an applicant, the regulations did not create an affirmative duty upon ACBSS to procure all documents necessary to complete the application, especially when W.S. had a representative.

"An administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." N.J. 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