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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
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-0276-15T1

A.S.,

Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES,

Respondent.

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Submitted March 5, 2018 - Decided April 10, 2018

Before Judges Messano, Accurso and O'Connor.

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

Schutjer Bogar LLC, attorneys for appellant  
(John Pendergast, on the briefs).

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

PER CURIAM

A.S. died from Huntington's Disease in August 2013. She was fifty years old. Her husband pre-deceased her. Shortly after her husband's death in November 2012, A.S. entered a nursing home. Their son, T.S., then eighteen or nineteen years old, applied for Medicaid benefits on his mother's behalf, listing his mother's sister's address on the application. The Salem County Board of Social Services notified him it could not determine A.S.'s eligibility for Medicaid without certain bank statements. When those were not forthcoming, the Board on June 27, 2013 notified T.S. it had dismissed the application and of his right to request a fair hearing. No fair hearing was requested.

While that application was still pending, A.S.'s nursing home, Golden Rehabilitation and Nursing Center, petitioned for the appointment of a guardian for A.S. A temporary guardian was appointed for her in July 2013 and apparently began to try and gather the necessary bank statements. A.S. died the following month and the guardian's ability to act on her behalf ended.

Two months later, A.S.'s sister, as executor of A.S.'s estate, designated herself as A.S.'s authorized representative for purposes of determining A.S.'s eligibility for Medicaid, listing the same address as was included in A.S.'s initial application. In January 2014, the executor executed a new form

designating Hendy Rothberg, the business manager of Future Care Consultants, the fiscal agent for Golden Rehabilitation, as A.S.'s authorized representative for Medicaid. Salem County reopened A.S.'s case, and A.S.'s executor advised she was in the process of obtaining short certificates in order to access the financial information the County required. The County thereafter communicated with the executor about the records required, including the current value of A.S.'s husband's 401k, in order to determine A.S.'s eligibility for Medicaid. When the executor failed to provide the necessary records, the County again closed A.S.'s case on May 31, 2014 and notified the executor of her right to request a fair hearing.

In July, Rothberg inquired of the County whether it had been in contact with A.S.'s executor and if "she has been updating you with the corrected paperwork needed in regards to Medicaid?" The County informed Rothberg the executor advised "the spouse's 401k was going to be used to pay her bills" and that the County had closed the case. Rothberg asked the County to "reopen the case as we would need Medicaid to pay for the remaining room and board balance at the Nursing Home after the funds in the 401k are depleted." Rothberg was advised the case would not be reopened as the 401k put A.S. over the resource limit.

Nine months later, on April 2, 2015, counsel for Rothberg wrote to DMAHS claiming A.S.'s application for Medicaid had been pending for more than two years without a decision, and demanding a fair hearing based on "Salem County's inaction regarding [A.S.'s] November 2012 Medicaid application." DMAHS wrote to counsel on July 31, 2015, denying the request for a fair hearing based on Salem County having denied the reopened application in May 2014. On September 11, 2015, counsel wrote again to DMAHS claiming "[t]he denial letter issued in this case should have been sent to Ms. Rothberg of Future Care Consultants, not [the executor]," and renewing his request for a fair hearing. Counsel filed a notice of appeal three days later.

On appeal, counsel argues "[t]he caseworker for A.S. unlawfully refused to recognize Future Care as A.S.'s authorized representative." DMAHS counters that Salem County reopened A.S.'s application to permit A.S.'s executor, the person who designated Rothberg as A.S.'s representative, additional time to provide financial information from the five-year look back period necessary to determine A.S.'s eligibility for Medicaid benefits. It argues the County had ongoing communication with the executor during the several months in which it held A.S.'s application open and finally denied the application on May 31,

2014 by way of notice to the address listed on the application. DMAHS notes that Rothberg was aware the executor never supplied the County with the necessary financial information, was advised of the denial of the reopened application in July 2014 and yet did nothing for nine months.

Having reviewed the record, it is clear the information the County required to process A.S.'s application for Medicaid benefits was information that could likely only be acquired from A.S.'s executor and not from Rothberg, such as the value of the 401k account of A.S.'s late husband and any transfers of assets in the five years preceding her death. The County having reopened A.S.'s application upon the request of her executor, we do not find any error in its decision to communicate with the executor and mailing the denial notice to the address provided on the application. Moreover, the record makes clear that Rothberg was aware of the denial of A.S.'s application and waited months to engage counsel to request a fair hearing on her behalf.

Accordingly, we find no error in DMAHS's decision to deny Future Care's request for a fair hearing made nine months after it learned of the denial of A.S.'s application for Medicaid. Counsel has not demonstrated the decision was arbitrary, capricious or unreasonable under the circumstances. See E.B. v.

Div. of Med. Assistance & Health Servs., 431 N.J. Super. 183,  
191 (App. Div. 2013).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION