

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-1588-15T3

D.G. ,

Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent.

Submitted March 5, 2018 - Decided April 9, 2018

Before Judges Messano, Accurso and O'Connor.

On appeal from New Jersey Department of
Human Services, Division of Medical
Assistance and Health Services, No.
1325003602.

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; Stephen
Slocum, Deputy Attorney General, on the
brief).

PER CURIAM

D.G. was deemed incapacitated in January 2012, and her son, C.G., was appointed her guardian. C.G. executed a New Jersey Medicaid Program Designation of Authorized Representative form in 2013, designating attorney Michael E. Weintraub of Peluso, Castelluci & Weintraub as D.G.'s representative for purposes of establishing her eligibility for Medicaid. Weintraub submitted an application for Medicaid benefits to the Monmouth County Department of Human Services, Division of Social Services on D.G.'s behalf in April 2013, the same month she was admitted to Atlantic Coast Rehabilitation and Healthcare Center, a skilled nursing facility.

Monmouth County sent letters to the Peluso firm in May and July requesting various information necessary to establish D.G.'s eligibility for benefits. On July 17, 2013, C.G. passed away suddenly. Weintraub immediately notified the County and advised his firm would attend to having a successor guardian appointed. The firm obtained an order in September appointing D.G.'s daughter, S.G., as her guardian, but she subsequently failed to qualify and Letters of Guardianship were never issued to her. She also apparently failed to gather the necessary documents to allow the firm to process D.G.'s application for Medicaid.

On December 18, 2014, the County notified Weintraub that D.G.'s application for Medicaid benefits was denied "for failure to supply corroborating evidence necessary to determine program eligibility." The notice advised of petitioner's right to request a fair hearing within twenty days in accordance with N.J.A.C. 10:49-10.3. No request was made.

Atlantic Coast learned of the denial in January 2015. On August 5, 2015, Atlantic Coast obtained an order upon the filing of an "Emergent Verified Complaint," appointing it as D.G.'s "Medicaid Authorized Representative" with "authority to appeal the December 2014 denial of [D.G.'s] Medicaid application."¹ The

¹ DMAHS notes in its brief that Atlantic Coast did not provide notice to the agency of its application and nowhere states that it provided notice to Weintraub, D.G.'s attorney and designated representative, or to D.G.'s family. DMAHS further notes the court did not appoint Atlantic Coast as D.G.'s guardian or attorney-in-fact and "the order fails to specify which New Jersey statute permits Atlantic Coast to act for an incapacitated person without judicial or fiduciary oversight," citing 42 C.F.R. § 435.923(2) ("a court order establishing legal guardianship or a power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation").

In its reply brief, counsel for D.G. claims the fault is DMAHS's as it was the agency's "refusal to grant D.G.'s hearing request in violation of state and federal law that prevented D.G. from creating an adequate record in this matter." We reject that argument and suggest that should counsel intend to rely on similar orders in the future that it provide a copy of the complaint precipitating the order and advise of all persons or entities it served with notice of the application.

Administrator for Atlantic Coast subsequently executed a New Jersey Medicaid Program Designation of Authorized Representative form on behalf of D.G., appointing Kathy Granatelli of Dynamic Healthcare as D.G.'s authorized representative.

Granatelli apparently retained counsel to write to DMAHS on August 25, 2015, "to appeal the denial issued regarding [D.G.'s] application for Medicaid benefits." Counsel asserted the denial was issued in December 2014 when "due to the death of her son and Guardian [C.G.] and the failure of her daughter [S.G.] to complete the substitute Guardianship process, [D.G.] was without a Guardian or anyone else empowered to act on her behalf with regard to her Medicaid application." Counsel contended that "situation continued" until the August 5, 2015 order appointing Atlantic Coast as D.G.'s authorized representative, and thus "[t]he time to appeal the denial notice issued in this case consequently began on August 5, 2015."

DMAHS denied the request in a letter of October 21, 2015. Beyond noting that the request for a fair hearing was presented well out of time, DMAHS advised that counsel's information as to D.G. being without representation at the time of the denial in December 2014 was in error. DMAHS wrote "[t]he law firm of Peluso Castelluci & Weintraub represented [D.G.] as they filed the application and were provided with the requests for

information as well as the denial letter dated December 18, 2014." Further, DMAHS noted the August 5, 2015 order that appointed Atlantic Coast as D.G.'s authorized representative did not appear to empower Atlantic Coast to appoint Granatelli as D.G.'s authorized representative in its stead. The letter advised that D.G.'s representative could appeal the denial to this court.

On appeal, counsel for D.G. reprises the arguments made to the agency and adds that Michael Weintraub was never properly "designated to act as authorized representative for D.G." because Weintraub failed to sign the form.

Our review of the record convinces us that none of counsel's arguments is of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Leaving aside Granatelli's authority to hire counsel and pursue this appeal on D.G.'s behalf, ostensibly on the basis of an order designating Atlantic Coast as D.G.'s authorized representative, we are satisfied the 2013 Designation of Authorized Representative form in the appendix executed by D.G.'s son and guardian was plainly effective to authorize Weintraub to act on D.G.'s behalf in making application for Medicaid benefits. Counsel implicitly concedes as much by purporting to appeal the denial of the application Weintraub filed. Because we are satisfied Weintraub

was designated to act as D.G.'s authorized representative at the time Monmouth County denied her application and elected not to challenge that denial, we find no basis to disturb DMAHS's decision rejecting an attempted appeal of that decision eight months later as untimely. See E.B. v. Div. of Med. Assistance & Health Servs., 431 N.J. Super. 183, 190-91 (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