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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1700-15T3

G.C.,

Petitioner-Appellant,

v.

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

Respondents-Respondents.

Submitted March 5, 2018 – Decided May 16, 2018

Before Judges Messano and O'Connor.

On appeal from the 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 Division of Medical
Assistance (Melissa H. Raksa, Assistant
Attorney General, of counsel; Stephen
Slocum, Deputy Attorney General, on the
brief).

PER CURIAM

Petitioner G.C. appeals from the Division of Medical Assistance and Health Services' (DMAHS) Director's final agency decision, which affirmed the Administrative Law Judge's (ALJ) initial decision denying her application for Medicaid benefits. We affirm.

I

Petitioner was admitted into a nursing home in December 2014. On March 26, 2015, on her behalf, her representative applied for Medicaid benefits through the Bergen County Board of Social Services, the county welfare agency (CWA) that handles Medicaid applications for Bergen County residents. The CWA sent petitioner a written notice requesting, among other things, that she provide: (1) a copy of her birth certificate; (2) a copy of her social security card; (3) "proof of how living expenses – rent was paid in past 5 years"; (4) proof she filed an application for social security disability benefits; and (5) proof of insurance. The notice stated the failure to provide such information by April 26, 2015 might result in the denial of Medicaid benefits.

Petitioner did not supply the subject information by the April 26, 2015 deadline. On May 19, 2015, the CWA sent petitioner a letter stating her application for Medicaid

benefits was denied because she failed to provide the requested information. Long after the deadline for submitting documents passed, petitioner provided the CWA with copies of her income tax returns for the previous five years and information indicating her health insurance was discontinued in December 2015.

In August 2015, petitioner submitted a request for a fair hearing. The matter was transferred to the Office of Administrative Law and scheduled for a hearing before an ALJ.

A representative from the CWA was the only witness to testify at the hearing. At the close of evidence, petitioner argued the denial of her application should be reversed because the information the CWA requested she supply was not readily available and, regardless, the agency was required to obtain such information on her behalf.

The ALJ affirmed the CWA's finding petitioner was ineligible for Medicaid benefits. The ALJ found there was no evidence the subject information was unavailable to petitioner, and rejected her claim the agency was tasked with procuring such information. The Director of DMAHS adopted the ALJ's initial decision.

II

On appeal, petitioner contends the CWA was required to obtain the information it requested, and that its failure to do so rendered the denial of her claim arbitrary, capricious, and unreasonable. Although we agree petitioner was not required to submit some of the information the CWA requested, she needed to produce the balance so the agency could properly evaluate her eligibility for Medicaid benefits. Thus, we affirm the agency's final decision to deny her application for such benefits.

"[A] strong presumption of reasonableness attaches" to an administrative agency's decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993)). An appellate court will not reverse an administrative agency's decision unless it is arbitrary, capricious, or unsupported by substantial credible evidence in the record. In re Herrmann, 192 N.J. 19, 27-28 (2007). However, an appellate court is not bound by an agency's determination of a legal question. Norfolk S. Ry. Co. v. Intermodal Props., LLC, 215 N.J. 142, 165 (2013). The burden is upon the appellant to demonstrate grounds for reversal. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002).

New Jersey participates in the federal Medicaid program pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5. DMAHS is the agency within the Department of Human Services that administers the Medicaid program. N.J.S.A. 30:4D-5, -7; N.J.A.C. 10:49-1.1. The local CWA is charged with evaluating an applicant's eligibility for Medicaid benefits. N.J.S.A. 30:4D-7a; N.J.A.C. 10:71-2.2(a); N.J.A.C. 10:71-3.15.

To be eligible for such benefits, an applicant must satisfy the legal requirements of the program. N.J.A.C. 10:71-3.15. Applicants must provide the CWA with the information necessary to enable it to determine if the applicant is eligible for benefits. Further, applicants must "[a]ssist the CWA in securing evidence that corroborates his or her statements," N.J.A.C. 10:71-2.2(e)(2), and the applicant must do so from pertinent sources, see N.J.A.C. 10:71-3.1(b). The CWA is permitted to deny an application if the applicant fails to timely provide verifying information or "verifications." See N.J.A.C. 10:71-2.2(e); -2.9; -2.12; -3.1(b).

We address the documents the CWA requested petitioner to provide. First, the agency requested petitioner provide a copy of her birth certificate and Social Security card. Petitioner merely submitted her Social Security number, claiming such

response to these two particular document requests was sufficient.

The purpose of supplying an applicant's birth certificate is to verify his citizenship, and a birth certificate is deemed acceptable documentation of United States citizenship. See N.J.A.C. 10:71-3.3(g)(1)(i). However, there is no requirement an applicant provide his Social Security card to verify citizenship. Regardless, petitioner provided neither document. Petitioner argues N.J.A.C. 10:71-3.3(h) provides an applicant is only required to submit his or her Social Security number as proof of citizenship. Under the facts presented here, we disagree.

N.J.A.C. 10:71-3.3(h) states that if an applicant declares he is a United States citizen and otherwise meets all other eligibility requirements, the applicant may supply his social security number to DMAHS as proof of citizenship. Under such circumstances, the regulation permits DMAHS to access the State Verification Exchange System to obtain or confirm information an applicant supplies. Ibid.

Here, while it is not disputed petitioner declared she is a United States citizen, she did not otherwise meet "all other eligibility requirements" for Medicaid benefits. Therefore, this regulation is unavailing to her. The CWA was not required

to determine if she were a United States citizen upon acquiring her Social Security number. To prove her citizenship, petitioner was required to submit her birth certificate to the CWA. She failed to do so.

Petitioner next argues the agency erred when it rejected her application because she did not provide proof of how her living expenses were paid over the previous five years. She contends she provided copies of her income tax returns for such period, arguing the returns provided the requisite proof of her living expenses.

First, petitioner failed to provide the tax returns before the April 26, 2015 deadline. Therefore, the CWA did not have the opportunity to consider the returns during the period it was reviewing petitioner's application for benefits. Second, even if the returns were timely provided to the CWA, they were insufficient proof of how her living expenses were paid over the previous five years.

Whether one is eligible for Medicaid benefits depends in large measure upon the applicant's income and financial resources, and the CWA is responsible for determining whether an applicant's income and financial resources qualify an applicant for benefits. See N.J.A.C. 10:71-3.15(a). An applicant's

living expenses may expose the fact he failed to disclose all of his income and financial resources to the agency.

For instance, if an applicant's living expenses exceed his reported net income and he has not used his financial resources to cover such expenses, he may be tapping into undisclosed sources of income or resources. Therefore, the CWA is entitled to compare an applicant's living expenses to his income and resources. The CWA is not required to independently procure information about an applicant's living expenses. As previously stated, the law requires Medicaid applicants to assist the CWA in securing information to corroborate statements made in an application. N.J.A.C. 10:71-2.2(e)(2); N.J.A.C. 10:71-3.1(b).

Here, the CWA requested proof of how petitioner's living expenses were paid. In our view, it was implicit in such request the petitioner inform the CWA of what her expenses were. In the absence of such information, the income tax returns yielded no meaningful evidence about whether her expenses were covered by her reported income and financial resources. Income tax returns alone provide no context. Therefore, to prove how her living expenses were paid, petitioner was required to identify what those expenses were and how they were paid, which necessarily required she produce information about her income and, depending on the circumstances, her financial resources.

The CWA also requested proof petitioner filed an application for Social Security disability benefits. Petitioner argues 42 C.F.R. § 435.948(a)(1) required the CWA to obtain such information directly from the Social Security Administration and not from her. We agree.

This regulation states in pertinent part:

(a) The agency must . . . request the following information relating to financial eligibility from other agencies in the State and other States and Federal programs to the extent the agency determines such information is useful to verifying the financial eligibility of an individual:

(1) Information related to . . .
unearned income and resources from
. . . the Social Security
Administration (SSA),

[42 C.F.R. § 435.948(a)(1).]

An application for Social Security disability benefits relates to whether one is receiving unearned income and resources from the Social Security Administration. Clearly, such information was useful to verifying petitioner's financial eligibility for benefits; there would not have been any other reason for the CWA to have asked for such information. Therefore, petitioner was not required to submit proof she filed an application for Social Security disability benefits to the

CWA. It was CWA's responsibility to obtain a copy of that application.

Finally, with respect to the CWA's request petitioner provide proof of insurance, petitioner claims she forwarded proof to the CWA showing she had health insurance through December 2014. However, she did not submit such information to the CWA until well after her claim was rejected. The CWA contends it also requested information about whether she had any life insurance policies, but we did not see adequate proof of such request in the record.

Because G.C. failed to provide a copy of her birth certificate and proof of how she paid her living expenses over the previous five years, and did not timely submit information about the existence of health insurance coverage, we affirm the final agency decision denying her application for Medicaid benefits. The applicant failed to timely provide to the agency all of the information it needed to make a decision about her eligibility for benefits. Therefore, the agency's decision was not arbitrary, capricious, or unreasonable.

Finally, we note petitioner raised additional arguments in her brief in reply. It is improper for a party to use a reply brief to raise an issue for the first time or enlarge any argument advanced in the moving brief. L.J. Zucca, Inc. v.

Allen Bros. Wholesale Distributors Inc., 434 N.J. Super. 60, 87
(App. Div. 2014). Thus, we have declined to consider them.

If we have not addressed an argument petitioner asserted in her initial brief, it is because it was devoid of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION