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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-0277-15T1

S.H.,

Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent.

Submitted March 5, 2018 - Decided April 2, 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.
0115014783.

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

Petitioner S.H. appeals from a final agency decision of the
Department of Human Services, Division of Medical Assistance and

Health Services (DMAHS), denying his requests for a hardship waiver and a fair hearing. Because the requests were grossly out of time without any explanation for the delay, we affirm.

In response to S.H.'s application for Medicaid benefits, the Atlantic County Medicaid Long Term Care Unit notified his representative, G.G. on December 20, 2013, that petitioner was eligible for Long Term Care Medicaid as of January 12, 2014, subject to a five month and eleven day transfer penalty extending from August 1, 2013. 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.

Atlantic County sent another notice to G.G. the same day explaining the penalty was based on petitioner's transfer of \$41,661.46 for less than full market value during the look-back period, presumably to qualify for Medicaid, and of petitioner's right to rebut the presumption by providing evidence the transfer was for some other purpose. The notice advised G.G. should contact the County's Long Term Care Unit by January 3, 2014, and failing that, the agency would assume petitioner was not interested in providing such evidence and would be sent a notice of petitioner's right to appeal from the transfer penalty. The notice also advised of petitioner's right to request a waiver of the transfer penalty based on undue

hardship, as set forth in N.J.A.C. 10:71-4.10(q), within twenty days.

Eleven months later, counsel for the nursing home in which petitioner resided wrote to Atlantic County, acknowledging the December 20, 2013 notice and requesting a hardship waiver on his behalf. When counsel received no response to that letter, the firm wrote again in February 2015, complaining of the agency's lack of response to its November 2014 request for a hardship waiver. A representative of Atlantic County responded by email, advising the November request was well out of time and questioned whether the nursing home was authorized to act on petitioner's behalf.

On June 29, 2015, counsel wrote to DMAHS attaching an authorized representative form signed by petitioner on June 6, 2015, requesting a fair hearing in response to "Atlantic County's inaction regarding [S.H.'s] November 2014 Undue Hardship Waiver application." DMAHS denied the request by letter of July 30, 2015 as out of time. This appeal followed.

On appeal, counsel argues that federal law permits skilled nursing facilities to submit undue hardship waiver applications on behalf of residents, that the county welfare agency's failure to respond to its November 2014 waiver application within 30 days violated N.J.A.C. 10:71-4.10(q), and that DMAHS's failure

to transfer its request for a fair hearing to the Office of Administrative Law violated federal law. We reject these arguments as without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Although there is no question but that federal law permits a residential facility to file an application for a hardship waiver on behalf of a resident, "with the consent of the individual or the personal representative of the individual," 42 U.S.C. § 1396p(c)(2)(D), see E.B. v. Div. of Med. Assistance & Health Servs., 431 N.J. Super. 183, 193-95 (App. Div. 2013), we are aware of no provision that would relieve the facility of complying with the time limits for doing so. See N.J.A.C. 10:71-4.10(q). As counsel has failed entirely to address S.H.'s failure to timely request either a hardship waiver or a fair hearing in response to Atlantic County's December 20, 2013 notices, we affirm.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION