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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-0677-15T1

A.S.,

Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent.

Submitted March 5, 2018 - Decided April 5, 2018

Before Judges Messano, Accurso and O'Connor.

On appeal from the New Jersey Department of
Human Services, Division of Medical
Assistance and Health Services, Case No.
14751.

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. appeals from an August 21, 2015 final decision of the
Department of Human Services, Division of Medical Assistance and

Health Services (DMAHS) denying her request for a fair hearing because it was filed more than eighteen months after the notice advising her designated authorized representative it had twenty days to request a fair hearing on A.S.'s behalf pursuant to N.J.A.C. 10:49-10.3(a). We affirm.

Acting pursuant to a power of attorney executed by A.S. in 2008 naming him her attorney-in-fact, D.F., A.S.'s nephew, executed a New Jersey Medicaid Program Designation of Authorized Representative form in 2012, designating Senior Planning Services as her representative for purposes of establishing her eligibility for Medicaid. Senior Planning Services subsequently filed an application for Medicaid on A.S.'s behalf, which was denied by the Atlantic County Medicaid Long Term Care Unit on December 10, 2012, because her available resources exceeded the \$2000 resource limit in N.J.A.C. 10:71-4.5. The denial advised that A.S. could request a fair hearing within twenty days.

Senior Planning Services made a timely request for a fair hearing on A.S.'s behalf, and the matter was transferred to the Office of Administrative Law. A hearing was scheduled for April 16, 2013. A.S. passed away on March 25, and on March 28, Senior Planning Services withdrew the request for a hearing. The OAL closed the case on April 1, 2013.

Senior Planning services apparently submitted a second application for Medicaid benefits on A.S.'s behalf after her death.¹ On December 10, 2013, Atlantic County sent Senior Planning Services a notice advising that A.S.'s Medicaid benefits were subject to a transfer penalty, which would render her ineligible for benefits until April 20, 2013, a date after her death. Although the notice advised Senior Planning Services that it could request a fair hearing on A.S.'s behalf within twenty days, it failed to do so.

On August 6, 2015, the law firm pursuing this appeal wrote to DMAHS advising it "had been retained to represent [A.S.] by her authorized representative" and was "writing to appeal the penalty notice issued regarding [A.S.'s] application for Medicaid benefits" issued by Atlantic County on December 10, 2013. The letter stated that

[A.S.] passed away on March 25, 2013. A decision was not reached regarding her Medicaid application until December 2013, approximately nine months after her death. No decedent's estate was opened on her behalf, and there consequently existed no one with the authority to appeal the attached penalty notice until [the General Equity judge] signed the attached order on July 17, 2015.

¹ Although both parties assert a second application for Medicaid benefits was filed, it is not included in the record.

The time to appeal the penalty notice issued in this case consequently began on July 17, 2015. I therefore respectfully request that this matter be set down for a fair hearing as soon as is practicable.

Counsel attached to his letter a Designation of Authorized Representative Form stating that "[A.S.] hereby authorizes [Kathy Granatelli of Dynamic Healthcare] to be my Authorized Representative in my application for Medicaid." Also attached was a July 17, 2015 superior court order on a verified complaint filed by Royal Suites Healthcare and Rehabilitation Center, LLC, captioned "In the Matter of [A.S.], a deceased person," for the appointment of a Medicaid Authorized Representative. The order provides that "Kathy Granatelli, Corporate Social Worker for Dynamic Healthcare, corporate affiliate of Royal Suites Healthcare and Rehabilitation Center LLC, is hereby appointed to act as Medicaid Authorized Representative for [A.S.], with the ability to take such actions as are necessary to qualify [A.S.] for Medicaid benefits available to her." It does not reflect anyone, including A.S.'s nephew or Senior Planning Services, her designated authorized representative, having been noticed of the application or served with the verified complaint.

DMAHS responded to counsel by letter of August 21, 2015 denying the request for a fair hearing as out of time. DMAHS noted Atlantic County's December 10, 2013 notice was addressed

to Senior Planning Services, A.S.'s authorized representative and the same entity that withdrew A.S.'s appeal in the OAL on March 28, 2013.

On appeal, counsel claims A.S. was admitted to Royal Suites in 2008. He acknowledges that Senior Planning Services filed an application for Medicaid on A.S.'s behalf in 2012, after A.S. was resident at Royal Suites, and filed a second application following A.S.'s death in 2013. Counsel contends, however, that Senior Planning Services' authorized representative form is void because "A.S. is not named as the Medicaid applicant on the form." He reasons from that premise that A.S. "lacked a Medicaid authorized representative at the time of her death," and it was "arbitrary, capricious and unreasonable of DMAHS to treat [A.S.'s 2012] form as a complete and effective authorization within the meaning of Medicaid Communication No. 11-03."²

We reject counsel's argument as spurious. The 2012 Designation of Authorized Representative form in the appendix executed by A.S.'s nephew and attorney-in-fact, while noting

² Medicaid Communication No. 11-03 issued February 22, 2011 announced the issuance of the authorization form designed by DMAHS "to protect New Jersey residents and expedite the application process." See E.B. v. Div. of Med. Assistance & Health Servs., 431 N.J. Super. 183, 194-95 (App. Div. 2013).

only D.F.'s name and his relationship to A.S., was plainly effective to permit him to designate Senior Planning Services to act on her behalf in making application for Medicaid benefits. Counsel implicitly concedes as much by purporting to appeal the decision Senior Planning Services obtained on A.S.'s behalf in December 2013. As its appeal was received over eighteen months after that decision was rendered, we affirm DMAHS's decision rejecting it as grossly out of time.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION