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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-0877-16T4

E.L.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

Respondent-Respondent.

Submitted January 9, 2018 – Decided January 23, 2018

Before Judges Fasciale and Sumners.

On appeal from the Division of Medical
Assistance and Health Services.

SB2 Inc., attorneys for appellant (John
Pendergast, on the briefs).

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel; Mark
D. McNally, Deputy Attorney General, on the
brief).

PER CURIAM

E.L. appeals from a September 15, 2016 final agency decision
by the Division of Medical Assistance and Health Services (DMAHS)

denying as untimely her request for a fair hearing. E.L. requested the hearing to challenge a denial of her Medicaid application. We remand to the Office of Administrative Law (OAL) to resolve a factual dispute as to the timeliness of the request for the hearing.

E.L. had two individuals helping her apply for Medicaid benefits: her son and Gitty Karp (Karp). We are unable to adjudicate the soundness of the decision under review because the parties dispute whether the Camden County Welfare Agency (CWA) was obligated to notify Karp of its denial of the Medicaid application. This is important because E.L. had a limited amount of time to request the fair hearing challenging the Medicaid denial. Pursuant to N.J.A.C. 10:49-10.3(b),

[a]n opportunity for a fair hearing shall be granted to all claimants requesting a hearing because their claims for medical assistance are denied or are not acted upon with reasonable promptness, or because they believe the Medicaid Agent or NJ FamilyCare-Plan A program has erroneously terminated, reduced or suspended their assistance. The Medicaid Agent or NJ FamilyCare program need not grant a hearing if the sole issue is one of a Federal or State law requiring an automatic termination, reduction or suspension of assistance affecting some or all claimaints. Under this requirement:

1. A request for hearing shall be defined as any clear expression (submitted in writing) by claimants (or someone authorized to act on behalf of

claimants) to the effect that they desire the opportunity to present their case to higher authority;

2. The freedom to make such a request shall not be limited or interfered with in any way, and the Medicaid Agent or NJ FamilyCare-Plan A program emphasis shall be on helping claimants to submit and process their case if needed;

3. Claimants shall have 20 days from the date of notice of Medicaid Agent or NJ FamilyCare program action in which to request a hearing.

It is undisputed that the CWA denied the Medicaid application on April 13, 2016. On that date, the CWA notified only the son of the denial because he himself had filled out the Medicaid application for E.L. The son had until May 1, 2016 to make a request for a fair hearing. The son never requested a fair hearing on behalf of his mother.

Karp, however, requested the fair hearing in August 2016, well after that twenty-day deadline had expired. The CWA and DMAHS maintain that after the twenty days expired, E.L. designated Karp as an authorized representative to act on her behalf. To support that belief, DMAHS points to a May 5, 2016 Medicaid program designation of authorized representative (DAR) form signed by E.L. and Karp. The DMAHS contends, therefore, that it had no obligation to notify Karp.

While this appeal was pending, E.L. made a motion before us to supplement the record with a March 21, 2016 DAR form signed by E.L. and Karp. E.L. argued that the CWA knew about the earlier DAR form, and therefore had the obligation to inform Karp about the Medicaid denial instead of notifying the son. E.L. contends that had Karp, not the son, been informed about the Medicaid denial on April 13, 2016, then Karp would have made a timely request for a fair hearing.

We deferred adjudication of the motion to supplement the record until this merits panel had the opportunity to consider the motion in the full context of the arguments on appeal. We now grant the motion. We do so because the supplemented record goes to the heart of E.L.'s request for a fair hearing. If the CWA knew about Karp and failed to notify her that it had denied the Medicaid application, then E.L. should have the opportunity to argue what impact that failure has on her request for a fair hearing.

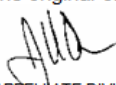
We are unable to determine factually whether the CWA or DMAHS had the March 21, 2016 DAR form before the CWA denied the Medicaid application. Such a determination will depend on findings of fact, especially because the parties dispute the authenticity of the March 21, 2016 form. We therefore remand to the OAL and direct that it adjudicate that factual dispute. Thereafter, the DMAHS

shall entertain E.L.'s request for a fair hearing on the more fully developed record.

As to E.L.'s contention that the DMAHS violated federal law by failing to transfer the fair hearing request to the OAL, we make the following brief remarks. 42 C.F.R. § 431.221(b) requires that DMAHS "not limit or interfere with the applicant's or beneficiary's freedom to make a request for a hearing." This federal regulation does not prevent individual states from placing time limitations for when applicants must file a hearing request with an agency. 42 C.F.R. § 431.221(d) states "[t]he agency must allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing[]." Twenty days is a reasonable time.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction because the reasonableness of DMAHS's decision to deny E.L. a fair hearing depends on the resolution of these factual disputes, which is dependent on a more fully developed record.

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


CLERK OF THE APPELLATE DIVISION