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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-2604-16T4

A.D.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES,

Respondent-Respondent,

and

CAPE MAY COUNTY BOARD OF  
SOCIAL SERVICES,

Respondent.

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Submitted February 6, 2018 – Decided March 14, 2018

Before Judges Reisner and Hoffman.

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

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

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Lauren S. Kirk, Deputy Attorney General, on the brief).

PER CURIAM

A.D. appeals from the January 10, 2017 final agency decision of the Division of Medical Assistance and Health Services (the Division), which adopted the initial decision of an administrative law judge (ALJ) affirming the denial of A.D.'s Medicaid application. For the reasons that follow, we affirm.

I

We discern the following facts from the record. On January 13, 2016, A.D.'s authorized representative filed a Medicaid application on her behalf with the Cape May County Board of Social Services (the Board). Approximately one month later, the Board sent a letter to A.D.'s health care facility representative<sup>1</sup> requesting supplemental information; the letter stated that failure to send the requested information by February 25, 2016 would result in denial of A.D.'s Medicaid application. The representative did not provide the requested information.

On March 22, 2016, the Board sent the representative another letter by regular mail and email. That letter stated failure to submit the requested information by March 28, 2016 would result

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<sup>1</sup> A representative of Future Care Consultants completed A.D.'s Medicaid application. The Board addressed its letters requesting supplemental information to a representative for the health care facility where A.D. resided.

in denial of A.D.'s Medicaid application. After not receiving the requested information, the Board sent the representative a final letter by regular mail and email, stating the requested information was required by April 8, 2016 to avoid denial of A.D.'s Medicaid application.

After again not receiving the requested information, the Board denied A.D.'s Medicaid application on June 24, 2016. The letter listed ten reasons for the denial. The majority of those reasons concerned the failure to provide the requested information within the required time frame; however, the third reason indicated the Board believed A.D. may have failed to disclose that she owned property in Italy.

A timely appeal was filed, and an ALJ conducted a hearing on September 15, 2016. During the hearing, the Board provided explanations for the reasons listed in its denial of A.D.'s Medicaid application.

A.D. produced evidence relating to the alleged Italy property, and her son-in-law, V.I., testified on her behalf. He stated he performed an inquiry into the property using A.D.'s family name because "in Italy[,] . . . when you get married the wom[en] retain[] their last name [and] . . . do not change it to the[ir] husband[s'] last name." V.I. stated he discovered A.D. did not own property in Italy; rather, A.D.'s brother owned the

property, and when he sold it in 2008, he directed that "all of [the] proceeds [from] the sale . . . go to [A.D.]." A.D. also admitted into evidence an Italian title search using A.D.'s family name, birth date, province and town as search inquiries; the search results indicated A.D. did not own property in Italy.

The ALJ affirmed the denial of A.D.'s Medicaid application in an initial decision, concluding A.D. "failed to provide verification of resources in a timely matter." Specifically, he noted:

Understanding [A.D.'s] authorized representative was experiencing difficulty complying, a thirty-one day extension was granted . . . . Another eleven-day extension was granted . . . . Finally, a seventy-seven day extension was permitted[] to . . . when the formal denial was issued. Even with these extensions, items remained unverified at the time of the eligibility denial.

On January 10, 2017, the Division adopted the ALJ's findings, stating A.D.'s "Medicaid application was properly denied for failure to provide necessary verification."

## II

On appeal, A.D. argues that the Division denied her application because it believed she owned excess resources by possessing property in Italy. Therefore, she contends, the ALJ erred in basing his decision on the timeliness of her submissions

and failing to address evidence she presented refuting her ownership of Italian property.

"An administrative agency's decision will be upheld 'unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 261 (App. Div. 2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "The burden of demonstrating that the agency's action was arbitrary, capricious, or unreasonable rests upon the [party] challenging the administrative action." E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 349 (App. Div. 2010) (alteration in original) (quoting In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006)).

"Medicaid is a federally-created, state-implemented program that provides 'medical assistance to the poor at the expense of the public.'" In re Estate of Brown, 448 N.J. Super. 252, 256 (App. Div.) (quoting Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004)), certif. denied, 230 N.J. 393 (2017). To receive federal funding, the State must comply with all the federal statutes and regulations. Harris v. McRae, 448 U.S. 297, 301 (1980).

In New Jersey, the Division administers the Medicaid program pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5. The county welfare boards evaluate eligibility. "In order to be financially eligible, the applicant must meet both income and resource standards." Brown, 448 N.J. Super. at 257 (citing N.J.A.C. 10:71-3.15).

The Division's regulations establish "policy and procedures for the application process . . . ." N.J.A.C. 10:71-2.2(b). The county welfare boards "exercise[] direct responsibility in the application process to . . . receive applications . . . ." Id. at 2.2(c). They also "[a]ssure the prompt and accurate submission of eligibility data . . . ." Id. at 2.2(c)(5). The regulations establish time frames to process an application, with the "[d]ate of effective disposition" being the "effective date of the application" when the application has been approved. N.J.A.C. 10:71-2.3(b)(1).

The Division's final agency decision was not arbitrary, capricious, or unreasonable. The record reflects that the Board sent three letters stating it would deny A.D.'s Medicaid application if the Board did not receive the requested information within provided time frames. That information was not submitted in a timely manner. Nor does the record indicate why A.D. or her representative could not have provided the Board, in a timely

manner, with the information later provided to the ALJ. Moreover, the record reflects that the Board requested, and did not receive, information pertaining to matters other than the alleged Italian property.

Accordingly, the Division was correct to deny an application that did not include the necessary documentation, particularly because Medicaid constitutes a resource of last resort, reserved for those who have a financial or medical need for assistance. See N.E. v. Div. of Med. Assistance & Health Servs., 399 N.J. Super. 566, 572 (App. Div. 2008). We therefore affirm, but without prejudice to A.D.'s right to reapply for Medicaid based on her current circumstances, including the information produced at the hearing before the ALJ.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION