SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1413-21

J.L.,

Petitioner-Appellant,

v.

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

Respondents-Respondents.

Submitted December 19, 2022 – Decided December 27, 2022

Before Judges Haas and DeAlmeida.

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

Michael Heinemann, attorney for appellant.

Matthew J. Platkin, Attorney General, attorney for respondent Division of Medical Assistance and Health Services (Melissa H. Raksa, Assistant Attorney

General, of counsel; Francis X. Baker, Deputy Attorney General, on the brief).

Eric M. Aronowitz, attorney for respondent Middlesex County Board of Social Services.

PER CURIAM

It is well established that State agencies must "turn square corners" with members of the regulated public. W.V. Pangborne & Co. v. N.J. Dep't of Transp., 116 N.J. 543, 561-62 (1989). This rule is particularly apt when the agency, as here, is dealing with our most vulnerable citizens. Because the Division of Medical Assistance and Health Services (Division) and its agent, the Middlesex County Board of Social Services (Board), failed to abide by this important maxim in this case, we are constrained to reverse and remand so that appellant J.L. can have the opportunity to complete the application process for the Medicaid benefits she needed to pay for her stay in a long-term care facility.

The facts of this matter are not in dispute. J.L. retained the services of Future Care Consultants to assist her in the preparation and submission of her application for Medicaid-Managed Long Term Care Services and Supports. J.L. designated the company's billing manager, Breindy Bernstein, as her authorized representative for purposes of the application.

At that time, J.L. was already residing in a nursing facility. J.L.'s husband, E.L., lived in a different facility operated by the Veteran's Administration (VA). E.L. suffered from dementia and could no longer manage his own affairs. Sometime before entering the VA facility, E.L. had given J.L. a written power of attorney for him.

Bernstein filed J.L.'s application with the Board on May 6, 2020. Two days later, the Board sent Bernstein a letter asking her to provide certain records so that the Board could verify J.L.'s eligibility for benefits. Among other things, the Board asked Bernstein to provide Amboy National Bank (Amboy) statements from May 2015 through May 2020. The letter advised Bernstein that the requested records had to be submitted by May 28, 2020.

However, the Board then sent Bernstein an identical letter on May 29, 2020. This letter stated that the due date for J.L.'s documentation was now June 8, 2020.

Four days before the new deadline, Bernstein sent some of the requested documents to her regular contact at the Board, Cindy Mellios. Bernstein stated that she was still waiting to receive more documents, and she asked Mellios for an extension of the due date.

On June 23, 2020, Bernstein sent an email to Mellios and forwarded bank statements from two more bank accounts. Bernstein also advised Mellios that the Amboy account requested by the Board was "only in [E.L.'s] name" and that Amboy had refused to release the account statements to J.L. Bernstein testified that Amboy had E.L.'s power of attorney naming J.L. as his representative on file, but the bank refused to honor it. Bernstein told Mellios that she was "trying to see if there is any other way to get [the Amboy bank statement] . . . , but she [might] need [Mellios'] assistance in contacting the bank directly because they may only agree to release the information on that account to Medicaid directly . . . ." Bernstein asked Mellios, "Is that something you can help me with?"

Kurt Echenlaub, the Board's representative at the hearing, testified that the Board thereafter sent a subpoena to Amboy for the records.[1] The subpoena was dated June 30, 2020. However, it only requested bank statements for the period between December 1, 2019 through May 31, 2020. The subpoena was returnable on July 30, 2020.

The subpoena return date came and went. Because she had heard nothing from Mellios or any other Board representative, Bernstein sent Mellios an email

[1] Echenlaub testified the Board had sent subpoenas in other cases in order to obtain eligibility documentation for applicants.

on August 6, 2020 asking whether Amboy had provided the Board with the subpoenaed records. The next day, Mellios responded, "Good morning, [t]he bank has not responded to the subpoena that was sent" on June 30, 2020. Echenlaub admitted the Board conducted no follow-up with Amboy concerning the subpoena and took no action to enforce it. Mellios did not provide Bernstein with a new due date for the documents and did not advise Bernstein she had to obtain them through alternate means. Bernstein testified she assumed the Board would continue to seek the documents from Amboy and waited for additional direction from Mellios.

However, on August 21, 2020, the Board sent Bernstein a letter stating that J.L.'s application for benefits had been denied. The Board stated it denied J.L.'s request because she failed to provide: (1) Amboy account statements from May 1, 2015 through May 1, 2020,[2] and (2) "[s]tatements detailing transactions [and] balances from May 1, 2015 through May 1, 2020 for all other resources owned by [E.L.]"

J.L. filed a timely appeal from the Board's determination and the Division transferred it to the Office of Administrative Law for hearing as a contested

[2] As stated above, the Board's subpoena had only requested statements from Amboy for the period between December 1, 2019 through May 31, 2020.

case. In addition to the facts and testimony already summarized, Echenlaub testified that the second group of documents set forth in the Board's August 21, 2020 letter were "not an issue right now . . . ." Bernstein also testified that if the Board had notified her that it was no longer going to pursue the subpoena for the Amboy records, she would have contacted her legal department for advice on how to proceed.

At the conclusion of the hearing, Administrative Law Judge (ALJ) Judith Lieberman asked Echenlaub to provide additional information concerning the subpoena the Board sent to Amboy because the copy submitted in evidence was not signed. Echenlaub later learned that although the Board attempted to mail the subpoena to Amboy, it was never delivered to the bank.

After receiving this information, the ALJ rendered a comprehensive written initial decision. The ALJ found that both Echenlaub and Bernstein "testified credibly." However, unlike Bernstein, "Echenlaub did not have personal knowledge of the facts and relied upon documents contained in the Board's case file."

After reviewing all of the facts, the ALJ found that J.L. had the primary responsibility for obtaining the records needed to verify her eligibility for Medicaid benefits. However, the ALJ stated that county welfare agencies, like

the Board in this case, were also "responsible for assisting applicants 'in exploring their eligibility for assistance,' N.J.A.C. 10:71-2.2(c)(3), and making known to the applicant 'the appropriate resources and services both within the agency and the community, and, if necessary, assist in their use.' N.J.A.C. 10:71-2.2(c)(4)."

This, the ALJ found, was where the Board let J.L. down. The ALJ stated:

> [T]he records at issue were inaccessible to [J.L.]. The only person who could authorize the release of the bank records to the Board was unable to do so. [J.L.] was not named on the bank account and, even though she and her husband took the appropriate steps to prepare for a time when E.L. would not be able to manage his financial affairs – by giving [J.L.] power of attorney – the bank would not honor the document. [J.L.] could not gain access to the records notwithstanding the assistance of a professional organization charged with helping in this regard. The Board was aware of this. It was also aware of [J.L.'s] continuing, but unsuccessful, efforts to obtain the materials.
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> Although the Board tried to assist, by subpoenaing the bank records, the attempt was unsuccessful. Importantly, its subpoena was not delivered to the bank and the Board did not inquire about the delivery failure or attempt the delivery again. This information was not shared with [J.L.]. Had [J.L.] been aware of this, she could have immediately attempted to secure service of a subpoena. The absence of communication prevented her from stepping in where the Board's effort failed. Given the Board's willingness to assist, it is reasonable to expect that its

> assistance would be as robust as possible or, at a minimum, it would communicate its effort and lack of success to [J.L.]. This is the type of circumstance contemplated by the regulation: neither [J.L.] nor the Board has control over or access to the information at issue and [J.L.] requires additional time to pursue a properly served subpoena or other mechanism.

Accordingly, the ALJ found that "the Board's denial of [J.L.'s] application, due to her failure to provide the bank records at issue, was not in accord with the controlling regulation." The ALJ also stated that J.L. "should be afforded an opportunity to serve a subpoena that requests all of the necessary documents."

The Board filed exceptions to the ALJ's decision. On November 28, 2021, Assistant Commissioner Jennifer Langer Jacobs issued a final decision rejecting the ALJ's recommendations and holding that J.L. was ineligible for Medicaid benefits because she did not produce the required documentation about her financial resources. The Assistant Commissioner found that J.L. alone was responsible for producing all records needed to verify her eligibility and that this responsibility "was not alleviated by [the Board's] courtesy" in attempting to subpoena these records for J.L.

In so ruling, the Assistant Commissioner stated that Bernstein failed to produce sufficient written documentation to support her contention that Amboy had refused to produce the records. However, the Acting Commissioner did not

address the ALJ's credibility finding in Bernstein's favor on this point, or the fact that the Board had obviously accepted Bernstein's representations concerning the unavailability of the records when it attempted to subpoena them.

The Acting Commissioner also found that Bernstein failed to submit the other records identified in the Board's August 21, 2020 denial letter. However, the Acting Commissioner did not address the fact that Echenlaub, the Board's only witness, testified that those records were "not an issue" at the time of the hearing.

On appeal, J.L. argues that the Acting Commissioner's decision was arbitrary, capricious, and unreasonable. She asserts that this decision should be reversed and the matter remanded so that she can provide the Amboy statements and any other requested documentation within a reasonable time period. We agree.

Our review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "In order to reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [ ] not supported by substantial credible evidence in the record as a whole.'" Ibid. (second alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J.

571, 580 (1980)). In determining whether an agency's action is arbitrary, capricious, or unreasonable, our role is restricted to three inquiries:

> (1) whether the agency action violates the enabling act's express or implied legislative policies; (2) whether there is substantial evidence in the record to support the findings upon which the agency based application of legislative policies; and (3) whether, in applying the legislative policies to the facts, the agency clearly erred by reaching a conclusion that could not reasonably have been made upon a showing of the relevant factors.
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> [W.T. v. Div. of Med. Assistance & Health Servs., 391 N.J. Super. 25, 35-36 (App. Div. 2007) (quoting Pub. Serv. Elec. & Gas Co. v. N.J. Dep't of Envtl. Prot., 101 N.J. 95, 103 (1985)).]

Furthermore, "[i]t is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 355 (App. Div. 2010) (second alteration in original) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)). "Nevertheless, 'we are not bound by the agency's legal opinions.'" A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div. 2009) (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001)).

"[W]here an agency rejects an ALJ's findings of fact, [the court] need not give the agency the deference [it] ordinarily accord[s] on review of final agency decisions." A.M. v. Monmouth Cty. Bd. of Soc. Servs., 466 N.J. Super. 557, 565 (App. Div. 2021). In fact, N.J.S.A. 52:14B-10(c) forbids agencies from modifying an ALJ's factual findings as to the credibility of lay witnesses, unless such findings are "arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." If an agency head "reject[s] or modif[ies] any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c).

Agencies are bound by an ALJ's factual findings "just as" appellate courts are bound by the factual findings of trial courts. Cavalieri v. Bd. of Trustees of Pub. Employees Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004). "[G]enerally it is not for [an appellate court] or the agency head to disturb [an ALJ's] credibility determination, made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K. v. State, 184 N.J. 367, 384 (2005). "When an ALJ has made factual findings by evaluating the credibility of lay witnesses, the [agency] may no longer sift through the record anew to

make its own decision," even if that decision "is independently supported by credible evidence." Cavalieri, 368 N.J. Super. at 534. Where the record, "can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Id. at 537.

Applying these principles, we are satisfied that the Acting Commissioner's decision to deny J.L.'s request for Medicaid benefits without providing her with an opportunity to obtain the Amboy account records on her own cannot stand. The undisputed evidence demonstrates that J.L. was unable to obtain these records because the bank refused to honor her husband's power of attorney. When Bernstein advised the Board of this development, its representative stated the Board would subpoena the records. Thereafter, Bernstein understandably relied upon the Board's representation that it was handling the matter.

However, the Board did not follow through. It never contacted Amboy about its request for the records, even after Bernstein reached out to inquire about the status of the request. The Board also never advised Bernstein that the Board was giving up or that Bernstein should obtain the records herself. Instead, it simply sent a denial letter to Bernstein. As it turned out, the Board never even

served the subpoena on Amboy, and the subpoena it attempted to serve only requested a portion of the documents it alleged were needed.

The Acting Commissioner's decision incorrectly overlooks the ALJ's clear credibility findings concerning Bernstein's efforts to secure the Amboy statements before and after contacting the Board for help. The Board itself obviously agreed that Bernstein and J.L. were unable to secure the records because it attempted to subpoena them on their behalf. The Acting Commissioner's determination that other records were also needed is also belied by Echenlaub's concession that those other records were "not an issue" in the case at the time of the hearing.

As set forth in our extended recitation of the idiosyncratic, yet uncontradicted, facts of this case, Bernstein attempted to obtain the Amboy records on J.L.'s behalf. When she could not do so, she contacted the Board for help. The Board agreed to subpoena the records. The Board failed to do so and failed to even apprise Bernstein that the ball was now back in her court before abruptly denying J.L.'s request for benefits. Clearly, the Board did not "turn square corners" with J.L. in the handling of her application. Under these circumstances, the Acting Commissioner's final decision to deny J.L.'s

application without giving her another chance to obtain the documents on her own was plainly arbitrary, capricious, and unreasonable.

Therefore, we reverse the Acting Commissioner's November 28, 2021 final decision and remand the matter to the Division for further proceedings. The Division, with the assistance of the Board as necessary, should identify the remaining records needed to verify J.L.'s eligibility for benefits and give her and her representative a reasonable period of time to obtain these documents before a new determination of eligibility is made.

Reversed and remanded. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION