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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1462-20**

E.S.,

Petitioner-Appellant,

v.

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

Respondents-Respondents.

Argued November 16, 2022 – Decided December 8, 2022

Before Judges Mayer and Enright.

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

Cari-Ann Levine argued the cause for appellant (Coward Dizzia, LLP, attorneys; Cari-Ann Levine, on the briefs).

Mark D. McNally, Deputy Attorney General, argued the cause for respondent Division of Medical

Assistance and Health Services (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Mark D. McNally, on the brief).

John A. Alice argued the cause for respondent Gloucester County Board of Social Services.

PER CURIAM

Petitioner E.S., (Ellen) appeals from a December 21, 2020 final agency decision by the Division of Medical Assistance and Health Services (DMAHS), adopting the initial decision of an Administrative Law Judge (ALJ) finding Ellen ineligible for Medicaid benefits. We affirm.

I.

In 2009, Ellen executed a power of attorney (POA) in favor of her daughter, V.H. (Vera). Ten years later, Ellen became a long-term resident of the Deptford Center. Because Ellen was suffering from dementia and no longer able to manage her affairs, a social worker at the Deptford Center filed an initial Medicaid application on her behalf in January 2019.

The County Welfare Agency (CWA), Gloucester County Board of Social Services, reviewed Ellen's application and sent a letter to Vera, as Ellen's POA, asking Vera to supply additional documents so the CWA could determine Ellen's

eligibility for Medicaid benefits. Vera supplied some, but not all the requested documents. Therefore, in March 2019, the CWA denied Ellen's application.

On June 18, 2019, Jannell Thomas, the Regional/Medicaid Coordinator of the Deptford Center, filed a second Medicaid application on Ellen's behalf. Thomas included a copy of an unfiled guardianship complaint with the application, as well as a psychiatric evaluation and a doctor's report describing Ellen's condition; the doctor's report included a statement that Vera did "not wish to be involved" with her mother. Although the POA remained valid, Thomas never referred to that document in the second application. The draft of the guardianship complaint also did not refer to the existing POA nor seek its revocation.

After reviewing the June 2019 application, a CWA caseworker concluded he needed additional financial documentation to verify Ellen's eligibility for Medicaid. Because no designated authorized representative (DAR) form or POA was included with the second application, the caseworker searched Ellen's name in the agency's system and found her previous application, as well as contact information for Ellen's POA. Accordingly, the CWA issued a letter to Vera, detailing the information it needed to complete Ellen's eligibility determination. The letter informed Vera that if the requested information on the

"Needs List" was not supplied by July 19, 2019, Ellen's application would be denied. The caseworker also reached out to Thomas to let her know the Needs List was forwarded to Vera

On June 26, 2019, an "Order Fixing Guardianship Hearing Date and Appointing Attorney for Alleged Incapacitated Person" was entered in Ellen's guardianship matter. The order provided for the temporary appointment of an attorney to act on Ellen's behalf and fixed a hearing date for July 31, 2019. A copy of this order was not sent to the CWA, although Ellen's second application remained pending at that time.

On August 1, 2019, a Chancery Division judge executed a "Judgment of Incapacity and Appointment of a Guardian of the Person and Estate," naming an attorney to act as Ellen's guardian and revoking Vera's POA. The judgment was not forwarded to the CWA.

Five days later, the CWA denied Ellen's second application, based on Vera's failure to provide the documents identified in the Needs List. On August 9, the CWA sent Thomas a courtesy letter alerting her to the denial.

Notably, the newly-appointed guardian named in the August 1 judgment was not authorized to act on Ellen's behalf until August 30, 2019, when letters

of guardianship were issued. Additionally, it was not until September 16, 2019 that Ellen's guardian designated Thomas to be Ellen's DAR.

Once Thomas became Ellen's DAR, she requested a fair hearing, and the matter was referred to the Office of Administrative Law. In January 2020, an ALJ conducted the fair hearing; Thomas, as well as Ellen's caseworker and guardian, testified at the hearing. On September 22, 2020, the ALJ affirmed the CWA's denial of Ellen's second Medicaid application based on Ellen's failure to provide the requisite financial information. In her comprehensive and thoughtful opinion, the ALJ found "throughout the second Medicaid application process, the [Deptford Center] was aware that [Vera] was [Ellen's] POA" and "[Vera's] POA remained valid until it was revoked on August 1, 2019. Therefore, the Needs List was properly sent to [Vera] [i]n June . . . 2019, as the only known authorized representative for [Ellen]."

Additionally, the ALJ found Ellen's guardian "was not legally able to act on behalf of [Ellen] until August 30, 2019" and "there was a gap of time between the entry of the Guardianship [Judgment] and the denial of the second Medicaid application when Ellen had no representation." Further, the judge determined that "at no time, throughout the application process up until the date of denial

and even thereafter, was the County placed on notice of the change of circumstances surrounding [Ellen's] legal representation."

The ALJ also found "there was no follow-up by the nursing home to keep the County informed about the status of the guardianship filing — either before the denial [or] after" and "[a]t no time prior to the denial[] was an extension of time requested." The ALJ noted, "[i]t is not the County's responsibility to follow-up on unfiled guardianship paperwork or chase the nursing home to see when or if a guardian has been appointed," and because Deptford Center's representatives initiated the guardianship matter, it "should have . . . followed through by providing the County with a copy of the filed Verified Complaint, noticed the County of the return date for the hearing and provided it with a copy of the Guardianship [Judgment]."

Additionally, the ALJ concluded no "extraordinary circumstances were presented to the County," such as a "filed and docketed petition for guardianship, entry of the Guardianship [Judgment], revocation of the POA, [or] concern over fraudulent activity by [Vera]" before the application was denied, "which would have called for an extension of time to allow the application to be processed." The ALJ further explained that "unfiled guardianship paperwork does not create extraordinary circumstances nor does an unsubstantiated claim that a family

member does [not] wish to assist in the application process." Accordingly, the ALJ concluded Ellen's application was "properly processed . . . within the forty-five-day time period [under] N.J.A.C. 10:71-2.3," considering Ellen "was aged — not disabled," and the CWA's "denial of [Ellen's] second Medicaid application was appropriate."

On December 21, 2020, after considering the testimony and documents provided to the ALJ, DMAHS's Assistant Commissioner adopted the ALJ's initial decision and agreed with the ALJ that the CWA "properly denied" Ellen's second Medicaid application. Moreover, the Assistant Commissioner rejected Ellen's argument that the agency should have afforded her ninety days to process her application. The Assistant Commissioner reasoned that "[w]hen eligibility depends on establishing disability or blindness, the CWA must complete an application within [ninety] days," but because Ellen was ninety-four and "considered aged" when her second application was filed, the CWA properly processed her application within forty-five days.

II.

On appeal, Ellen reiterates many of the same arguments she raised during the fair hearing. In particular, she contends DMAHS erred in upholding the August 6, 2019 denial of her application because: there was "clear evidence"

Vera "refused" her POA appointment and a guardianship proceeding was pending prior to the denial. Ellen also argues it was error for DMAHS to affirm the ALJ's initial decision because the August 1 judgment of incapacity revoked Vera's POA several days before the CWA denied Ellen's application.

Additionally, Ellen contends the CWA deprived her of due process by failing to send her or the Deptford Center the Needs List or the subsequent notice of denial. Further, she urges us to reverse DMAHS's decision due to the CWA's failure to afford Ellen more time to process her application under the "exceptional circumstances standard" while "the establishment of a guardian" was pending. Ellen also argues "the agency decision was capricious because it unfairly discriminate[d] on the basis of disability."

Moreover, Ellen newly argues: DMAHS erred in affirming the ALJ's decision because Vera was "under a disability and unable to exercise the authority conferred by the [POA] effectively"; DMAHS's decision "contravenes controlling New Jersey law"; and the CWA "owed a duty of assistance . . . to [Ellen,] who was incapacitated."

None of these arguments are persuasive. Accordingly, we affirm, substantially for the reasons expressed by the ALJ in her thoughtful written opinion, which DMAHS adopted. We add the following remarks.

"Appellate review of an agency's determination is limited in scope." K.K. v. Div. of Med. Assistance & Health Servs., 453 N.J. Super. 157, 160 (App. Div. 2018) (quoting Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009)). "In administrative law, the overarching informative principle guiding appellate review requires that courts defer to the specialized or technical expertise of the agency charged with administration of a regulatory system." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008) (citation omitted). Thus, we are obliged to uphold the administrative agency decision "unless there is a clear showing (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." Ibid. (citations omitted). But we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." In re Carter, 191 N.J. 474, 483 (2007) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). It also is well established that the burden of demonstrating arbitrary, capricious, or unreasonable agency action rests on the party opposing the agency's action. See E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 349 (App. Div. 2010).

Pursuant to the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to - 19.5, DMAHS is responsible for administering the Medicaid program in our State. Through its regulations, DMAHS establishes "policy and procedures for the application process." N.J.A.C. 10:71-2.2(b). In turn, a (CWA), like the Gloucester County Board of Social Services in this matter, evaluates eligibility. N.J.S.A. 30:4D-7(a); N.J.A.C. 10:71-1.5, -2.2(c).

Medicaid is intended to be a resource of last resort and is reserved for those who have demonstrated 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). "[T]o be financially eligible, the applicant must meet both income and resource standards." Matter of Est. of Brown, 448 N.J. Super. 252, 257 (App. Div. 2017); see also N.J.A.C. 10:71-3.15; N.J.A.C. 10:71-1.2(a). Accordingly, a CWA must verify the equity value of resources through "credible sources," and "shall evaluate the applicant's past circumstances and present living standards . . . to ascertain the existence of resources that may not have been reported." N.J.A.C. 10:71-4.1(d)(3). "If the applicant's resource statements are questionable or there is reason to believe the identification of resources is incomplete, the CWA shall verify the applicant's resource statements through one or more third parties." Ibid. The CWA may deny

eligibility for Medicaid if the applicant fails to timely provide verifying information or "verifications." N.J.A.C. 10:71-2.2(e); N.J.A.C. 10:71-3.1.

A CWA is subject to certain procedural requirements in processing applications under New Jersey's Administrative Code. The CWA must timely process applications and the "maximum period of time normally essential to process an application for the aged is [forty-five] days," whereas an application for the disabled or blind is given ninety days. N.J.A.C. 10:71-2.3(a). Any needs list or "notification letter" informing the applicant of outstanding documentation is considered the beginning of the forty-five or ninety-day time limit. Div. of Med. Assistance & Health Servs., Medicaid Commc'n No. 10-09, Case Processing Time Limit Increase 1-2 (2010).

The regulation also recognizes

that there will be exceptional cases where the proper processing of an application cannot be completed within the [forty-five/ninety-] day [required] period. Where substantially reliable evidence of eligibility is still lacking at the end of the designated period, the application may be continued in pending status. In each such case, the CWA shall be prepared to demonstrate that the delay resulted from one of the following:

1. Circumstances wholly within the applicant's control;
2. A determination to afford the applicant, whose proof of eligibility has been inconclusive, a further

opportunity to develop additional evidence of eligibility before final action on his or her application;

3. An administrative or other emergency that could not reasonably have been avoided; or

4. Circumstances wholly outside the control of both the applicant and CWA.

[N.J.A.C. 10:71-2.3(c).]

DMAHS must permit Medicaid applicants "to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency." 42 C.F.R. § 435.923(a)(1).

Applicants and beneficiaries may authorize their representatives to—

(1) Sign an application on the applicant's behalf;

(2) Complete and submit a renewal form;

(3) Receive copies of the applicant or beneficiary's notices and other communications from the agency;

(4) Act on behalf of the applicant or beneficiary in all other matters with the agency.

[42 C.F.R. § 435.923(b).]

The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or

her behalf, or the authorized representative informs the agency that he or she no longer is acting in such capacity Such notice . . . should include the applicant or authorized representative's signature as appropriate.

[42 C.F.R. § 435.923(c).]


Governed by these standards, we discern no basis to disturb DMAHS's December 21, 2020 decision. Indeed, the record supports DMAHS's findings that: Vera's POA was valid until it was revoked under the August 1 judgment; Thomas knew Vera was Ellen's POA when Ellen's second application was filed, yet Thomas neglected to disclose this information in the application; the verified complaint for guardianship likewise failed to reveal Vera held a valid POA; neither Thomas nor the attorney who filed the guardianship complaint provided the CWA with a copy of the June 26, 2019 order which fixed a guardianship hearing date for July 31, nor did either forward a copy of the August 1 guardianship judgment to the CWA after receiving it; the guardian appointed for Ellen under the August 1 guardianship judgment was precluded from serving in that capacity until the end of August 2019; Thomas did not become Ellen's DAR until several weeks after the August 6 denial; and at no time prior to August 6 did either Thomas or the attorney initiating the guardianship complaint ask the CWA for an extension to delay a decision on Ellen's application.

Based on these determinations, and absent "exceptional circumstances" which would have permitted the CWA to delay its decision, we decline to conclude DMAHS erred in finding the CWA appropriately viewed Ellen as an aged applicant and processed her application within the requisite forty-five-day period. Similarly, we perceive no reason to disturb DMAHS's finding that: (1) the CWA properly asked Vera — the only person authorized to act on Ellen's behalf between the time the second application was filed and denied — to supply the requisite verifications on its needs list; and (2) the CWA correctly denied Ellen's application when Vera did not timely supply the items identified on the needs list. In sum, DMAHS's decision was neither arbitrary, capricious or unreasonable.

To the extent we have not addressed Ellen's remaining arguments, it is because they either lack merit, Rule 2:11-3(e)(1)(E), or were not raised before the agency. See J.K. v. N.J. State Parole Bd., 247 N.J. 120, 124 (2021) (noting appellate review generally is restricted "to issues raised [previously] and [based on] the record created before the agency").

Affirmed.

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


CLERK OF THE APPELLATE DIVISION