SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3556-20

O.L.,

Petitioner-Appellant,

v.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES,

Respondent-Respondent.

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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.

Kristine Marietti Byrnes argued the cause for appellant (Legal Services of New Jersey, attorneys; Kristine Marietti Byrnes, Maura Sanders and Cassandra Stabbert, on the briefs).

Elizabeth M. Tingley, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant

Attorney General, of counsel; Jacqueline R. D'Alessandro, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner O.L. (Owen) appeals from the August 12, 2021 final decision of the Director of the Division of Medical Assistance and Health Services (DMAHS) denying his request for a fair hearing after the agency determined his "application was affirmatively withdrawn from processing by [Owen's] authorized representative." We reverse and remand for DMAHS to transfer the matter to the Office of Administrative Law (OAL) for a hearing.

I.

In August 2020, Owen suffered a stroke and was taken to RWJ-Rahway Hospital. The hospital filed an application on his behalf, seeking to establish his presumptive eligibility for Medicaid benefits. The application stated Owen's household, which included his son, had "no income," and that Owen "stopped working when the pandemic happened and exhausted his unemployment benefits."

Owen's application was logged into the New Jersey Family Care (NJFC) system on August 20, 2020. That day, NJFC sent Owen a letter confirming receipt of the application and advising, "[o]nce we have completed our review, we will notify you if we need any additional information to complete your

request for health insurance." The same notice confirmed Owen's application was "electronically sent to [NJFC] for a full eligibility determination." (Emphasis added). It also provided, "[p]lease DO NOT apply again while this application is being processed. It may take up to [forty-five] days to process your application." DMAHS did not advise Owen of any determination about his eligibility for Medicaid benefits within the forty-five-day time frame, nor did it send notice to Owen about any determination regarding his August 2020 application after the forty-five-day period elapsed.

A week after NJFC informed Owen his application had been successfully submitted, NJFC sent him a notice that his son was eligible for health coverage through NJFC and that "[i]f any family members applied for benefits but are not listed [in the notice], they will get a separate letter."

At the end of August 2020, Owen was transferred to Genesis Health Care Westfield Center (GHC), a facility providing skilled nursing rehabilitation. Following the transfer, Owen's sister executed a designated authorized representative (DAR) form,[1] naming Michael Kilroy, from GHC, as his authorized representative. Per the DAR form, Kilroy was authorized "to take any action . . . necessary to establish [Owen's] eligibility for [NJFC]."

[1] The DAR form bore NJFC's logo and a reference to DMAHS in its heading.

Although NJFC had requested Owen not file another application for benefits while his first application was pending, on September 22, 2020, GHC submitted a second application for Medicaid benefits to NJFC. The contents of the second application mirrored the first. The next day, NJFC notified Owen, rather than Kilroy, that his second application was received and would be reviewed. NJFC's September 23 notice referenced the same policy number — 0000737312 — that NJFC used to acknowledge receipt of Owen's first application.

Days later, NJFC sent a letter to Owen at his GHC address and asked him – rather than Kilroy – to submit additional financial information "to complete [his] application." Then, on October 9, 2020, NJFC sent a "final notice" to Owen, requesting additional financial information from him and warning if he did "not send in all the information requested[, his] application w[ould] be denied." The October 9 letter was sent to Owen at his home address, rather than his current address at GHC, or to Kilroy.

On October 14, 2020, Owen personally executed a second DAR form[2] and his signature was witnessed by someone named Margareth Dial. This time, Owen named Stephanie Sellers-Gregg, a "Resolution Specialist" from Change Healthcare, as his "Authorized Representative."[3] In the DAR form, Owen also initialed a provision stating, "I understand that while this authorization is in effect, all notices/correspondence sent by DMAHS . . . will only be sent to the Authorized Representative."

Sellers-Gregg also signed the DAR form on October 14; her signature appeared directly above the line calling for the authorized representative's signature. Moreover, Sellers-Gregg was named in the DAR form as the "Representative" and "Authorized Representative." Another individual, Sharon Nixon, signed the form as the "witness" for Sellers-Gregg's signature.

Nine days after Sellers-Gregg executed the DAR form, she sent an eleven-page fax to NJFC, which included documents to support Owen's pending applications. In the fax, Sellers-Gregg stated, "[p]lease let us know if you need

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[2] This DAR form again bore the NJFC logo and DMAHS's name in the heading, along with the policy number associated with Owen's first application. It also reflected the signature and name of Margareth Dial as Owen's witness.

[3] On appeal, Owen notes the DAR form naming Sellers-Gregg as his authorized representative contained "no explanation of the relationship between [her], Change Healthcare, and [GHC]."

anything else as we never received a letter from [the] Agency." One week later, Sellers-Gregg faxed more documents to NJFC with a cover letter stating, "[p]lease let me know if you need anything else."

On November 5, 2020, just six days after Sellers-Gregg had corresponded with NJFC, Sharon Nixon, the person who witnessed Sellers-Gregg's signature on the October 14 DAR form, faxed NJFC on behalf of Change Healthcare. The fax stated, "Change Healthcare is requesting a withdraw (sic) of our application for Medicaid for [Owen]." Nixon's November 5 fax also stated

> Change Healthcare is requesting a withdrawal of the pending Medicaid application that is being processed by NJFC. This client is currently in a nursing home and needs [long-term care] coverage. Please leave [Owen's] [p]resumptive . . . coverage as that was needed for the client but do not process for ongoing Medicaid.

Owen was discharged from GHC at the end of November. It was not until months later that he learned from his attorney about Nixon's November 5 fax. In fact, in March 2021, after Owen had begun "to receive substantial bills for his medical treatment from August to November 2020," his attorney reached out to a DMAHS representative, inquiring about the status of Owen's Medicaid applications. In a March 22, 2021 email, Owen's attorney asked the agency to "track down" Owen's application from the previous August and to "extend the

Medicaid eligibility into the fall." Owen's attorney argued Owen should not have lost his benefits "when he was eligible and in need of coverage."

A DMAHS representative subsequently advised Owen's attorney that NJFC received a letter in November 2020 requesting "a withdraw[al] of [Owen] from the pending NJFC Medicaid application." In response to this information, Owen's attorney requested a copy of Owen's file, his August and September 2020 applications, and a "copy of [the] November correspondence withdrawing his pending application."

Owen's attorney also questioned DMAHS about Change Healthcare's authority to withdraw Owen's pending applications. DMAHS answered that the DAR on file gave Change Healthcare "authorization on [Owen's] behalf." Owen's attorney immediately asked for "a copy of the DAR on file." She also notified DMAHS that unless the agency approved Owen's application as of October 1, 2020, "when his presumptive eligibility ended," and it provided coverage to Owen until March 2021, when he started receiving Social Security disability, Owen was requesting a fair hearing to address the "dismissal" of his applications.

On August 12, 2021, DMAHS denied Owen's fair hearing request, explaining "there was no denial of [his] application as the application was

affirmatively withdrawn in November 2020, nor is there any provision to reinstate an application six months after it was withdrawn that would form the basis for a fair hearing." The August 12 letter also noted Owen "applied for presumptive eligibility in August 2020[,] which was granted. However, this does not establish full or ongoing eligibility and a full application must be filed. That was done with the September 22, 2020 application." Although Change Healthcare did not submit either of Owen's applications, the August 12 letter stated

> You questioned Change HealthCare's authorization but at no time have you stated that they were not his authorized representative at the time. The fact that Change Healthcare provided copies of the family's drivers' licenses and Social Security cards indicates that [Owen] or his family provided Change HealthCare with these documents.

II.

On appeal, Owen contends: (1) "[t]he operation of the presumptive eligibility process resulted in an application for Medicaid in August [2020]"; (2) he was entitled to notice and a fair hearing because he "had a legitimate claim of entitlement to Medicaid benefits based on his . . . applications"; (3) he was deprived of procedural due process on both of his applications due to a lack of notice about their disposition and the lack of opportunity to address their

disposition at a fair hearing; and (4) this matter is a "contested case within the meaning of the Administrative Procedure Act." Because we agree with Owen's second and third contentions, we need not address his remaining arguments.

"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). 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). "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. Dep't of Transp., 338 N.J. Super. 23, 32 (App. Div. 2001)).

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).

"[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). Additionally, 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) (Emphasis added).

> Applicants and beneficiaries may authorize their representatives to—
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> (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).]

DMAHS also must allow applicants to terminate or modify the appointment of a DAR at any time. 42 C.F.R. § 435.923(c). In fact,

> [t]he 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.
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> [Ibid. (emphasis added).]

The regulations further provide that an authorized representative:

> (1) Is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation, . . . to the same extent as the individual he or she represents; [and]
> (2) Must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.
>
> [42 C.F.R. § 435.923(d) (emphasis added).]

Given the need for maintaining confidentiality over an applicant's information, DMAHS also is obliged to require "as a condition of serving as an authorized representative," that the "provider or staff member or volunteer of an organization must affirm that he or she will adhere to the regulations . . . relating to confidentiality of information . . . as well as other relevant State and Federal

laws concerning conflicts of interest and confidentiality of information." 42 C.F.R. § 435.923(e).

Applicants have the right to fair hearings when their claims "are denied or are not acted upon with reasonable promptness." N.J.A.C. 10:49-10.3(b). Requests for fair hearings must be submitted to DMAHS in writing within twenty days of the date of the notice of a denial, reduction, or partial denial of Medicaid benefits. N.J.A.C. 10:49-10.3(b)(1), (3).

If an applicant is denied Medicaid benefits, "[i]t is the right of every applicant . . . to be afforded the opportunity for a fair hearing in the manner established by the policies and procedures set forth in N.J.A.C. 10:49-10 and 10:69-6." N.J.A.C. 10:71-8.4(a). According to 42 C.F.R. § 431.205, "[t]he hearing system must meet the due process standards set forth in Goldberg v. Kelly, 397 U.S. 254 (1970)."[4]

Governed by these standards, we are persuaded Owen was entitled to a fair hearing to address whether an individual he never authorized to act on his behalf (Nixon), or an organization that had not submitted Owen's applications from either August or September 2020 (Change Healthcare), had authority to

[4] The Goldberg Court held, in part, that due process in administrative proceedings requires timely and adequate notice and a meaningful opportunity to be heard. 397 U.S. at 267-69.

withdraw his applications. As discussed, the DAR forms signed and initialed by Owen in September and October 2020 first authorized Michael Kilroy and then Sellers-Gregg to act on his behalf in all matters with the agency. And under the October 14 DAR form, Sellers-Gregg was the only person authorized "to take any action which may be necessary to establish [Owen's] eligibility for [NJFC]."

Significantly, the record is devoid of any evidence suggesting Owen notified DMAHS prior to November 5, 2020 that Sellers-Gregg was no longer his DAR; similarly, there is no proof Sellers-Gregg notified the agency before that date that she was no longer acting in the capacity of Owen's DAR. In fact, just days before Nixon faxed the November 5 letter, Sellers-Gregg faxed additional documents to NJFC on Owen's behalf and asked NJFC to "let [her] know" if it needed any other information. Under these circumstances, we are convinced DMAHS should have granted Owen's request for a fair hearing to address whether it was proper for the agency to deem his August and September 2020 applications "withdrawn."

Additionally, we discern no reason to conclude, as DMAHS has intimated, that because Sellers-Gregg faxed documentation to NJFC in October 2020, while employed at Change Healthcare, her actions served as notice to the agency

that she was no longer acting in her individual capacity as Owen's DAR, and that instead, Change Healthcare, or anyone currently working at Change Healthcare, had become Owen's designated authorized representative. Such an approach would circumvent 42 C.F.R. § 435.923(c), which, as we have noted, provides, in part:

> [t]he power to act as an authorized representative is valid until the applicant . . . modifies the authorization or notifies the agency . . . the representative is no longer authorized to act on his . . . behalf, or the authorized representative informs the agency . . . she no longer is acting in such capacity. . . . Such notice . . . should include the applicant or authorized representative's signature as appropriate.

Additionally, we are convinced Owen was entitled to a fair hearing because he did not receive a timely written final decision from DMAHS regarding the disposition of either of his applications. Per N.J.A.C. 10:49-10.10, "[c]laimants shall receive a written final decision, in the name of the Department and shall be notified of their right to judicial review." Similarly, 42 C.F.R. § 431.245(a) requires the agency to "notify the applicant or beneficiary in writing of . . . [t]he decision; and . . . [the applicant's] right to request a State agency hearing or seek judicial review, to the extent that either is available." And pertinent to this appeal, under 42 C.F.R. § 435.914(b)(1), "[t]he agency must dispose of each application by a finding of eligibility or ineligibility unless

. . . [t]here is an entry in the case record that the applicant voluntarily withdrew the application, and that the agency sent a notice confirming [the applicant's] decision." (Emphasis added). Therefore, even if DMAHS considered Owen's application voluntarily withdrawn, it was obliged to send him a notice confirming that decision and to notify him of his right to judicial review. DMAHS did not fulfill either obligation.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). Here, Owen was denied due process because he received neither a written final decision nor notification of his right to judicial review after DMAHS deemed his pending applications "withdrawn." Such procedural irregularities should be "'cured' by a subsequent plenary hearing at the agency level." Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352, 361 (App. Div. 1994).

In sum, because the denial of Owen's request for a fair hearing was arbitrary, capricious, and unreasonable, we reverse and remand for DMAHS to transfer the matter for a hearing before the OAL.

Reversed and remanded for proceedings in accordance with this opinion. We do not retain jurisdiction.