



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

**DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

In re:

DCIS No. Redacted

Redacted, Claimant

Appearances: Elicia Bollenbach, Personal Needs Coordinator, Ikor Incorporated  
Patricia Maisano, President CEO, Ikor Incorporated

Kathleen Dougherty, Sr. Social Worker Supervisor, Long Term Care Medicaid  
Sharmeeeka Thompson, Social Worker/Case Manager, Long Term Care Medicaid  
Victoria Lynam, Sr. Social Worker Administrator, Long Term Care Medicaid  
Lisa Zimmerman, Chief of Operations, Division of Medicaid and Medical Assistance.

I.

Redacted ("Claimant"), by and through Ikor Incorporated, applied for Medicaid Long Term Care ("LTC") and was denied because requested information was not provided by the requested dates. The Claimant's representative asserts that exigent circumstances delayed document retrieval, and that the Division of Medicaid and Medical Assistance ("DMMA") should have provided more time for the Claimant's representative to acquire the requested documentation.

The Division of Medicaid and Medical Assistance ("DMMA") contends that the agency requested information from the Appellant's representative and it was not provided by the requested dates.

II.

Claimant applied for Medicaid Long Term Care on November 3, 2009.

By notice dated February 17, 2010, DMMA denied Claimant's application for Medicaid Long Term Care. (Exhibit #3).

On February 22, 2010, Claimant filed a timely request for a fair hearing. (Exhibit #2)

The Claimant was notified by certified letter dated April 5, 2010, that a fair hearing would be held on April 27, 2010. The hearing was conducted on that date in New Castle, Delaware. This is the decision resulting from that hearing.

### III.

Redacted, by and through her representative, Ikor Incorporated (“Ikor”), applied for Medicaid Long Term Care (“LTC”) on November 3, 2009. Ikor was appointed as the Claimant’s attorney-in-fact via a durable power of attorney executed according to the laws of the state of Delaware on July 27, 2007 in Hockessin, DE. (Exhibit #4) Following the application, DMMA sent a “we need” letter dated November 3, 2009, requesting information including the last five (5) years of financial statements on all of the Claimant’s accounts, including closing statements where applicable, and the provision of ongoing financial statements until eligibility was determined. An initial deadline of November 18, 2009 was provided. (Exhibit #5)

DMMA informed Ikor by a second “we need” letter dated November 23, 2009 and with a deadline date of December 8, 2009, that DMMA had not received copies of the last five (5) years of statements on all financial accounts, including opening and closing statements for all accounts that were no longer open. Ikor was asked to continue sending bank statements for as long as the case was pending. (Exhibit #6)

DMMA informed Ikor by a third “we need” letter dated January 8, 2010 and with a deadline date of January 23, 2010, that DMMA required the following information to determine eligibility: various bank statements for accounts numbered 8602702284 and 8879446367, all 2009 bank statements for account number 121000265, documentation providing the status of the Claimant’s Metlife annuity, and opening and closing statements for the Claimant’s accounts with JJB Hilliard, W.L. Lyons Inc. (Exhibit #7)

DMMA informed Ikor via a “we need” email dated February 8, 2010 and with a deadline date of February 11, 2010, that various statements for accounts numbered 8602702284 and 8879446367 had still not been provided, that all of the 2009 statements for account number 12100265 had not been provided, and that the January 2010 bank statements had not been provided. (Exhibit #8)

DMMA informed Ikor via a “we need” email dated February 9, 2010 and with a deadline date of February 12, 2010, that DMMA was still waiting on documentation concerning the status of the Metlife annuity and the accounts with JJB Hilliard, W.L. Lyons Inc., as well as the missing bank statements identified in the February 8, 2010 email. (Exhibit #9) Ms. Thompson testified that as of February 17, 2010, the requested documentation had not been received. As a result, she testified that the case was closed, and the request for Medicaid Long Term Care was denied.

Ms. Thompson testified that as DMMA receives eligibility information, if the information is not complete, additional information is requested. Ms. Thompson testified that through the course of DMMA’s investigation into the Claimant’s eligibility, they learned about the Claimant’s Metlife annuity and accounts at JJB Hilliard, W.L. Lyons Inc., and subsequently requested documentation for those accounts. Ms. Thompson testified that the information indicating the

existence of the Metlife annuity and accounts at JJB Hilliard, W.L. Lyons Inc. were uncovered in the ledgers Ikor provided to DMMA for eligibility review. Ms. Thompson further testified that during the course of the eligibility review, the Claimant's representation within Ikor changed three (3) times, until Ms. Bollenbach became the representative. Ms. Bollenbach testified that she took on the Claimant's case sometime in November 2009.

Ms. Thompson testified that the Claimant's request for Medicaid Long Term Care was denied for six (6) reasons. First, Ikor failed to provide bank statements from the Claimant's checking account at Harleysville Bank for October, November, and December 2009, as well as January and February 2010. Second, Ikor failed to provide bank statements for the Claimant's money market account at Harleysville Bank for October, November, and December 2009, as well as January and February 2010. Third, no bank statements were provided for all of 2009 for a third account at Harleysville Bank. Fourth, no documentation was provided concerning the status of the Claimant's Metlife annuity. Fifth, no documentation was provided concerning the status of any accounts the Claimant held at JJB Hilliard, W.L. Lyons Inc. Lastly, Ikor failed to provide bank statements for 2010, violating the request in the first "we need" letter to continue to provide bank statements until eligibility was determined.

Ms. Thompson testified that due to the fact that the Claimant's representative changed three (3) times after the initial application, DMMA allotted more time to Ikor than is traditionally provided. Ms. Dougherty testified that whereas a normal eligibility determination is completed within thirty (30) to forty-five (45) days, Ikor was given one hundred five (105) days to provide the requested information.

Ms. Bollenbach testified that she had explained to DMMA in November 2009 that it would be difficult to acquire the requested information. Ms. Bollenbach explained that while Ikor held a durable power of attorney for the Claimant, that power of attorney dated back only until 2007. It would be difficult, therefore, to gather financial documentation from before 2007. Further, Ms. Bollenbach testified that the Claimant's sister-in-law was initially appointed in the durable power of attorney; as a result, she testified, many of the Claimant's accounts were held jointly in the sister-in-law's name, and therefore Ikor had to rely upon the sister-in-law to gather some requested information. In addition, Ms. Bollenbach testified that her efforts to compile requested financial documentation was hampered by the fact that many of the banks had changed names as well as their internal documentation protocols.

Ms. Bollenbach testified that she has attempted in good faith to provide all requested information in a timely manner. She further testified that through her email correspondence with Ms. Thompson, DMMA was well aware that Ikor required more time to compile the requested information. Ms. Bollenbach and Ms. Dougherty further stated that, in their opinions, the information requests for the Metlife annuity and JJB Hilliard accounts were sprung on them at the last minute, and that the time allotted by DMMA to acquire that documentation was insufficient.

#### IV.

Two issues were raised in this instance. First, whether the Claimant, through her representative, Ikor, submitted the necessary documentation for the agency to make a determination. Second, whether the agency's employees have any responsibility in this matter other than gathering information, evaluating it and making a determination. I find that these matters must be answered in the negative.

##### *Documentation*

Pursuant to Division of Social Services Manual ("DSSM") 14100.4, the agency must include in each applicant's case record facts to support the agency's decision on his application. The agency must dispose of each application by a finding of eligibility or ineligibility, unless:

- a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the agency sent a notice confirming his decision;
- b) there is a supporting entry in the case record that the applicant has died; or
- c) there is a supporting entry in the case record that the applicant cannot be located.
- d) Certain factors of eligibility must be verified according to specific eligibility groups. If all information requested is not received, DSS cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility. If all verification requested is not received by the due date given to the applicant, an eligibility determination cannot be made. This will result in denial of the application.

Pursuant to DSSM 14800, generally, certain factors of eligibility must be verified according to specific eligibility groups. Verification may be verbal or written and must be obtained from an independent or collateral source. In order for verbal verification to be considered documentation, the DSS case worker must record the information obtained in the case record.

Documentation is the process of collecting written information to substantiate factors required for eligibility. Documentation becomes part of the DSS case record. Documents must be date stamped. If all information requested is not received, DSS cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized. That may require additional verifications. Failure to provide requested documentation may result in denial or termination of eligibility.

The record reveals that Ikor has been provided with three (3) “we need” letters and two (2) follow-up “we need” emails. As the Claimant’s representative, Ikor has not appropriately responded to these communications.

Testimony establishes that Ikor was notified in a timely manner of the requested information. The first “we need” letter requested the financial documents of all of the Claimant’s accounts for the previous five (5) years, as well as a request that Ikor continue to provide bank statements until eligibility was proven. (Exhibit #5) These requests were repeated in the second “we need” letter dated November 23, 2009. (Exhibit #6) The third “we need” letter, dated January 8, 2010, is the first time that documentation concerning the Metlife annuity and accounts at JJB Hilliard, W.L. Lyons Inc. was requested; however, testimony reveals that as DMMA discovered these accounts through the ledgers provided by Ikor, Ikor should have been aware that these accounts existed. (Exhibit #7) Moreover, Ikor was ultimately given more than thirty (30) days to provide this requested information before the case was closed on February 17, 2010. This third “we need” letter also identifies that they still required all of the 2009 statements for account number 121000265 and various statements for accounts numbered 8602702284 and 8879446367. (Exhibit #7)

The record as a whole reflects that Ikor did not submit the documentation requested in the third “we need” letter and reiterated in the two (2) subsequent “we need” emails. Therefore, the agency correctly denied the Claimant’s application based upon lack of verification.

#### *Agency Employees*

In general, DMMA employees act in a ministerial capacity. In this case, they informed the Claimant’s representative about what documentation was needed for the application process, they gathered the information provided and they analyzed the information to determine whether it corresponded to the information requested in the “we need” letters. DMMA workers have no authority to act in a discretionary capacity, other than where authorized by statute.

Pursuant to DSSM 2000, under the application process the primary responsibility for establishing eligibility resides with the client, however, DMMA will take necessary action to assist the applicant to establish his eligibility for assistance. DMMA 2000 provides the following instruction for agency workers to follow to discharge their application responsibilities:

each applicant will be informed of the programs for which he may be eligible, of his right to a decision on eligibility within a reasonable period of time, and will be informed of his right to appeal any Division decision on eligibility. Each applicant will have his need for assistance determined in accordance with Division standards. The income of an applicant will be considered in relation to his needs during the calendar month in which the individual applies for assistance. Only such resources as an applicant has currently available will be used in determining eligibility.

I find that the agency employees have acted within their authority and have processed the Claimant's application with the information provided to them by Ikor representatives. Currently, Ms. Bollenbach and Ms. Maisano must produce the additional documentation and file a new application for benefits as the application they previously processed is denied with this decision.

DMMA has provided substantial credible evidence on which to sustain its denial of Medicaid Long Term Care for the Claimant.

V.

For these reasons, the February 17, 2010 decision of the Division of Medicaid and Medical Assistance to deny the Claimant for Medicaid Long Term Care benefits effective November 1, 2009 and ongoing is AFFIRMED.

Date: May 17, 2010



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MICHAEL L. STEINBERG, J.D.  
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE DEPARTMENT  
OF HEALTH AND SOCIAL SERVICES

May 17, 2010

POSTED

cc: Patricia Maisano  
Elicia Bollenbach  
Kathleen Dougherty, Team 230  
Sharmeeeka Thompson, Team 230  
Victoria Lynam  
Lisa Zimmerman, DMMA

## EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 - Fair Hearing Summary consisting of two (2) pages dated March 12, 2010.

EXHIBIT #2 - The Claimant's request for a fair hearing dated February 22, 2010, consisting of three (3) pages.

EXHIBIT #3 – Copy of Notice to Deny Your Medical Assistance dated February 27, 2010 consisting of six (6) pages.

EXHIBIT #4 – Copy of Durable Power of Attorney for Redacted, dated July 27, 2007, consisting of seven (7) pages.

EXHIBIT #5 – Copy of a “we need” letter dated November 3, 2009, consisting of one (1) page.

EXHIBIT #6 – Copy of a “we need” letter dated November 23, 2009, consisting of one (1) page.

EXHIBIT #7 – Copy of a “we need” letter dated January 8, 2010, consisting of one (1) page.

EXHIBIT #8 – Copy of a “we need” email from Sharmeeeka Thompson to Elicia Bollenbach dated February 8, 2010, consisting of one (1) page.

EXHIBIT #9 – Copy of a “we need” email from Sharmeeeka Thompson to Elicia Bollenbach dated February 9, 2010, consisting of one (1) page.

EXHIBIT #10 – Copy of Harleysville Bank Statement for account number 8602702284 for the time period December 8, 2009 through January 5, 2010, consisting of one (1) page.

EXHIBIT #11 – Copy of Harleysville Bank Statement for account number 8602702284 for the time period November 6, 2009 through December 7, 2009, consisting of one (1) page.