STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: February 14, 2014)

JOCELYN JAY	:	
	:	
V.	:	**C.A. No. PC-2013-0752**
	:	
RHODE ISLAND DEPARTMENT OF HUMAN SERVICES	:	

DECISION

NUGENT, J. Before this Court is an appeal from a January 14, 2013 decision by the Rhode Island Department of Human Services (DHS) denying Jocelyn Jay's (Plaintiff or Ms. Jay) appeal of the closure of her Medical Assistance (MA) benefits eligibility for a limited time. The Plaintiff seeks either a reversal of the DHS decision or remand of the case. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Ms. Jay and her son were provided with healthcare through the Medical Assistance Program (Medicaid) administered in Rhode Island by DHS. Specifically, Ms. Jay, having been determined eligible by DHS, was enrolled in the RIte Care Program which, through Medicaid, allows individuals to enroll in a health management organization (HMO) that uses a primary care provider to coordinate medical services. See DHS Reg. § 349.05. Ms. Jay and her son were enrolled in United Healthcare (United) as their HMO for RIte Care, which paid their medical providers for services given, unlike the coverage they would have received under Medicaid,

which is a fee-for-service.[1] When it came time for her eligibility to be redetermined, Plaintiff was notified that an application needed to be submitted to DHS.

Sometime before July 5, 2012, Ms. Jay was sent a notice that her RIte Care benefits would not be recertified if she did not submit a renewal application.[2] On July 18, 2012, DHS sent a letter, known as the "10-day letter," to the Plaintiff informing her that her MA would end on July 31, 2012 because a renewal form was not submitted. (Ex. 4.) The notice explained that the decision was based on a failure to comply with DHS Regulation 0318.05. Id.

The Plaintiff contacted DHS on July 26, 2012 regarding the application. On July 30, 2012, the Plaintiff submitted her renewal application. The Plaintiff visited her doctor from August 1 to August 16, 2012. The doctor submitted the claim for payment to United which refused to pay stating that Ms. Jay was not covered by United during that period of time. Also, her provider did not accept Medicaid so she sent Ms. Jay a bill for the services.

Upon learning that United would not pay for the visits, the Plaintiff filed an appeal with DHS. The appeal was heard before a hearing officer of DHS on December 19, 2012. At the hearing, Ms. Cicerchia, a caseworker supervisor for Family Medical Assistance Providence, testified on behalf of DHS. Ms. Cicerchia testified that Ms. Jay's MA case had been scheduled to close automatically because the renewal was not received before July 5, 2012, and that it did close on July 31, 2012 for failure of Ms. Jay to return the renewal form. (Tr. at 5.) The case was automatically closed with DHS and also with United because it is the policy of the HMO to disenroll members on the same day as the Medicaid closure date. (Tr. at 6.) Ms. Cicerchia testified that the application was received on July 30, 2012, and the case was reapplied for

[1] Fee-for-service means MA will pay a participating health care provider on a per service basis.
[2] There was no evidence or testimony on record of the date in which the notice was sent to Ms. Jay.

August 1, 2012. (Tr. at 5.) The application was approved on August 9, 2012, ten days after it was submitted. (Tr. at 9.) Lastly, Ms. Cicerchia stated that when Medicaid is reinstated, there is a lag time of ten to fourteen days for the HMO to begin coverage. (Tr. at 6.)

Ms. Jay also testified at the hearing. She stated that after receiving the July 18, 2012 letter, she called Bonnie, a DHS employee handling her case, who told her that if she returned the application by July 30, 2012, Bonnie would process the application. (Tr. at 2-3.) Ms. Jay further testified that she submitted her application to DHS on July 30, 2012 and continued to see her doctor as she believed her coverage was continuous. (Tr. at 3, 5.) She received a letter on August 9, 2012 confirming that her eligibility was approved and her MA coverage was retroactive, and thus, she was covered by Medicaid at all times. (Ex. 6.) However, because the Plaintiff's case was closed automatically in the computer on July 31, 2012, her eligibility for MA had expired, and her United coverage had ended. Ms. Jay was not reenrolled in the plan until August 17, 2012, eight days after DHS notified United that she had regained eligibility. The lapse in coverage for the Plaintiff under the HMO was less than three weeks. During this period of time, the Plaintiff was covered under MA for fee-for-service care, but not under United. (Tr. at 5.)

The hearing officer issued a written decision denying the appeal of the Plaintiff, reasoning that DHS followed its recertification policy; that it recertified MA eligibility as of August 1, 2012; that he did not have jurisdiction over United or its date of reinstatement of coverage; and that, ultimately, it was correct for DHS to end the appellant's eligibility effective July 31, 2012. Ms. Jay filed a timely appeal to the Superior Court.

II

Standard of Review

Section 42-35-15 (g) governs the Superior Court's scope of review for an appeal of a final agency decision. Sec. 42-35-15 (g). The statute provides, in relevant part:

> "(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Sitting as an appellate court with a limited scope of review, the Superior Court justice may not substitute his or her judgment for that of the agency with respect to the credibility of the witnesses or the weight of the evidence as to questions of fact. Ctr. for Behavioral Health v. Barros, 710 A.2d 680, 684 (R.I. 1998); Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). This directive applies even if the court may have been inclined to arrive at different conclusions and inferences upon review of the evidence and the record. Johnston Ambulatory Surgical Assocs. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (quoting R.I. Pub. Telecomms. Auth. v. R.I State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)) (quotations omitted); Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992).

Further, this Court may "reverse, modify, or remand the agency's decision" if the decision is "clearly erroneous in view of the reliable, probative, and substantial evidence on the

whole record, or is arbitrary or capricious and is therefore characterized by an abuse of discretion." Id. The authority to "remand the case for further proceedings" is a broad grant of power, but it is, in essence, merely declaratory of the inherent power of the court to remand, in a proper case, to correct deficiencies in the record and thus afford the litigants a meaningful review. Lemoine v. Dep't of Mental Health, Retardation and Hosps., 113 R.I. 285, 290, 320 A.2d 611, 614 (1974); see Ferrelli v. Dep't of Emp't Sec., 106 R.I. 588, 261 A.2d 906 (1970).

III

Analysis

Medicaid is an optional federal program which provides funds for states to offer medical coverage for certain eligible individuals. 42 U.S.C § 1396. Rhode Island has chosen to participate in the program and, thus, must administer Medicaid in compliance with federal law. G.L. 1956 § 40-8-1; Harris v. McRae, 448 U.S. 297, 301 (1980). DHS is an agency within the executive branch of Rhode Island state government and is responsible for administering Medicaid within the state to individuals such as the Plaintiff. See §§ 42-12-1, et seq. Specifically, the Medicaid program in Rhode Island is governed by the DHS Regulations contained in the DHS Manual, the State Medical Assistance Plan (State Plan), and §§ 40-8-1, et seq. These rules and regulations were approved by the United States Department of Health and Human Services (HHS), as a necessary part of receiving federal funding. See Hale v. State, 433 A.2d 374, 376 (Me. 1981); see also §§ 40-8-1(c) and 40-8-5.

When an individual fills out an application for MA, DHS makes a determination of eligibility. See DHS Reg. 0348.35. Covered individuals, for various reasons, need to reapply with DHS for recertification of eligibility from time to time. This process is governed by DHS Regulations. Regulation 0318.05 provides: "A redetermination results in recertification at the

existing scope of services, recertification for a reduced scope of services or case closure. Redetermination precedes a case closure. A case is not closed without a positive finding of ineligibility."

Agency policy found in Regulation 0318.10 provides that, "Two months prior to the end of a certification period, InRHODES identifies cases due for redetermination and sends to the Management Information Systems (MIS) Unit at the DHS Central Office a list of the cases and a name and address label for each case." It further says:

> "[w]hen the application form is returned within the required time period (prior to expiration of the certification period), the eligibility worker compares the information on the new application to the InRHODES record, entering changes once necessary verification has been provided . . . .
>
> "If the application is not received by the 20th of the month or ten days prior to the end of the certification period, the worker enters a non-cooperation code on the InRHODES STAT/STAT panel causing a TEN-DAY NOTICE of discontinuance to be sent.
>
> "The case closes at the end of the old certification period if the recipient has not responded by the end of the 10-day notice period."[3]

Lastly, "DHS has sole authority for disenrolling RIte Care members from health plans . . . ." DHS Reg. 0348.85.

A

Recertification Policy

Plaintiff's first contention is that the hearing officer's finding that the agency complied with its recertification policy when it terminated Medicaid and closed her redetermination case

[3] It is also important to note that the Ten-Day Notice was sent on July 18, 2012, which DHS testified was the same day the automatic-close code was entered into their computer. July 18, 2012 was neither ten days before the end of the certification period nor was it entered on the 20th day of the month; thus, the Ten-Day Notice did not comply with DHS regulation.

on July 31, 2012 was clearly erroneous. Ms. Jay contends that if DHS did not comply with its policies, then it should be held responsible for the lapse in her United coverage because it improperly closed her case. Conversely, DHS avers that the reason Ms. Jay's case had closed was because she failed to return her application until after she received the Ten-Day Notice which terminated her case automatically in the InRHODES system and, as a result, terminated her United coverage. At issue—given that the date the application was submitted is undisputed—is whether DHS Regulations require an application to be submitted prior to the Ten-Day Notice or prior to the end of the certification period to prevent a case from closing and/or a disenrollment from the HMO. See DHS Reg. 0318.10.[4]

Our Supreme Court has found that in an agency decision '"[t]he absence of required findings makes judicial review impossible . . . and fails to satisfy the statutory requirements of § 42-35-12."' Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council, 536 A.2d 893, 896 (R.I. 1988) (quoting East Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 569, 376 A.2d 682, 687 (1977)). In Sakonnet, it also commented that "[e]ven if the evidence in the record, combined with the reviewing court's understanding of the law, is enough to support the order, the court may not uphold the order unless it is sustainable on the agency's findings and for the reasons stated by the agency." 536 A.2d at 897 (internal citations omitted).

Here, the decision of the hearing officer does not address the requisite issues in a clear manner. Further, despite his conclusion that DHS followed its regulations, the hearing officer failed to make a finding as to when the application needed to be returned in order for the Plaintiff to remain enrolled in the HMO without a lapse. Instead, the hearing officer framed the question before him as "whether the [Plaintiff] failed to submit the required medical assistance renewal

[4] The end of the certification period, and ten days after the Ten-Day Notice has been sent, are necessarily within a day or two of the end of the certification period.

form prior to July 31, 2012." However, in answering this question, the hearing officer found that, although the Plaintiff did submit the application before the certification period ended, the Ten-Day Notice sent on July 18, 2012 closed the case and that the discontinuance of the coverage would take place on July 31, 2012. The hearing officer also found that, because the application was not processed until August 9, 2012, the case automatically closed in the computer system. This finding emphasizes the date the application was actually processed, and not the date Ms. Jay returned the application to DHS, as a determining factor.

Without further findings, it is unclear as to what the hearing officer found to be the reason for the case closing: whether the case closed in the system because it was not received by a certain date or because the application was not processed until a certain date. Additionally, if the case does not close at the end of the certification period, the agency decision must determine whether an individual would be covered under United until a redetermination was made.

Furthermore, the hearing officer, in his decision, did not make findings related to the policies surrounding the period of lapse in HMO coverage and whether that part of DHS policy was followed; he merely restated that Ms. Cicerchia, on behalf of DHS, testified that it takes one to two weeks for an HMO to reopen eligibility of enrollment.

This Court finds the decision does not contain the requisite findings and support that this Court needs in order to make a determination. See Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 448-49 (R.I. 2010) ("If the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, . . . is to remand to the agency . . . ." (quoting Florida Power & Light Co. v. Lorion, 470 U.S. 729, 744, 105 S. Ct. 1598, 84 L.Ed. 2d 643 (1985))). In such cases where the record and

decision being reviewed by this Court are deficient, remand is an appropriate action.[5] Accordingly, this Court remands the matter to the agency hearing officer for findings of fact and conclusions of law on the issues addressed above.

B

Estoppel

Plaintiff further raises the issue of estoppel. She contends that even if DHS had properly complied with its procedures, it might be liable to Ms. Jay on estoppel grounds.

Our Supreme Court has stated that "it is now widely recognized that the doctrine of estoppel may in a proper case be invoked against public agencies to prevent injustice and fraud." West v. McDonald, 18 A.3d 526, 540 (R.I. 2011) (quoting Ferrelli, 106 R.I. at 593, 261 A.2d at 909). Such a case is proper if a person acts or refrains to act to his or her detriment based on representations made by an agency or officer which is within the scope of his or her duties. Ferrelli, 106 R.I. at 593, 261 A.2d at 909; Potter v. Crawford, 797 A.2d 489, 492 (R.I. 2002). In addressing the issue of estoppel, our Supreme Court in Ferrelli also found that, in the interest of justice, an agency appeal, such as the one it had before it, should be remanded when an issue of estoppel was overlooked in the agency decision to further consider the issue. Ferrelli, 106 R.I. at 594, 261 A.2d at 910 ("The [court] . . . should have remanded the case . . . to the board of review with direction to consider the issue raised by the testimony as to representations purportedly made by . . . an employee of the agency and whether, if they were made, they were within the scope of his authority as such an employee.")

[5] "This Court has characterized the authority of the Superior Court to remand for further proceedings under § 42-35-15(g) as 'a broad grant of power . . . to remand, in a proper case, to correct deficiencies in the record and thus afford the litigants a meaningful review.'" Tikoian, 989 A.2d at 448-49 (quoting Lemoine, 113 R.I. at 290, 320 A.2d at 614).

Here, the hearing officer did not address the issue of estoppel as it relates to this case nor did he make factual findings regarding representations made to Ms. Jay by DHS. The absence of such findings on estoppel indicates that the hearing officer overlooked the issue, and this Court is persuaded that, in the interest of justice, this matter should be addressed on remand to the hearing officer. See id. at 594, 261 A.2d at 910.

IV

Conclusion

For the reasons set forth above, this case is remanded to the DHS hearing officer so that he can make the necessary findings consistent with this Decision. On remand, clear findings should be made determining what caused the closure of this redetermination case. Specifically, these findings should include the relevant deadlines under DHS policy related to when Ms. Jay's application needed to be submitted in order to prevent both the case closure and the lapse in coverage. In addition, this case is also remanded for the purpose of the DHS hearing officer to make proper findings on the issue of estoppel. This Court will retain jurisdiction. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Jay v. Rhode Island Department of Human Services**
CASE NO:	**PC-2013-0752**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 14, 2014**
JUSTICE/MAGISTRATE:	**Nugent, J.**
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