

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 14-019684
Issue No.: 2002 2004
Agency Case No.: [REDACTED]
Hearing Date: December 14, 2015
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 14, 2015, from Detroit, Michigan. Petitioner did not appear. [REDACTED] appeared as Petitioner's attorney and guardian. [REDACTED] testified on Petitioner's behalf. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager, and [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's Medical Assistance (MA) application.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 30 2014, Petitioner applied for MA benefits (see Exhibits 1-4), including retroactive MA benefits from December 2013 (see Exhibits 5-6).
2. On May 13, 2015, MDHHS faxed to Petitioner's attorney a Verification Checklist (VCL) which requested various documents.
3. On May 15, 2014, MDHHS denied Petitioner's Medicare Savings Program (MSP) eligibility.
4. On August 12, 2014, Petitioner requested a hearing to dispute the denial of MA benefits.

CONCLUSIONS OF LAW

Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's attorney requested a hearing to dispute a denial of MA benefits. MDHHS testimony indicated the denial of MA benefits was based on Petitioner's failure to verify an asset.

For all programs, DHS is to use the DHS-3503, Verification Checklist to request verification. BAM 130 (July 2014), p. 3. For MA benefits, DHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. *Id.*, p. 7. DHS is to send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. *Id.*, p. 6.

MDHHS presented a VCL (Exhibit 7) dated May 5, 2014. MDHHS conceded this particular VCL could not have been sent through their automated mailing system in Bridges (the MDHHS database). Thus, the only way the VCL could have been mailed is if Petitioner's specialist prepared the document for mailing. Such a scenario is plausible, however, MDHHS failed to present any reliable evidence that such a mailing occurred. It is also troubling that the specialist failed to utilize the automated mailing system within Bridges, which could have also verified that a proper mailing occurred.

Petitioner's attorney's employee testified she is in charge of her employer's MDHHS-related cases. She further testified that her office did not receive the VCL until May 13, 2014, when MDHHS faxed it. During the hearing, Petitioner's attorney presented documents to MDHHS which tended to verify her testimony (the documents were not admitted). Based on the presented evidence, it is found that MDHHS sent a VCL to Petitioner's attorney on May 13, 2015, and that the VCL was not sent earlier.

MDHHS testimony indicated Petitioner's application was denied on May 15, 2014, only two days after the VCL was faxed to Petitioner's attorney. The two day timeframe was insufficient. It is found that the corresponding denial of Petitioner's MA eligibility was improper. For good measure, a secondary reason exists for reversing the denial of MA benefits.

MDHHS testimony indicated the application denial was reflected on a Health Care Coverage Determination Notice dated May 15, 2015. The notice stated that Petitioner's

MSP eligibility was denied because the application was made in a previous year. MSP benefits concern payment of a Medicare premiums and deductibles. MSP determinations are made separately from Medicaid eligibility determinations. Petitioner's MA benefit application primarily sought a determination of Medicaid.

Upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BEM 220 (July 2014), p. 1. A notice of case action must specify the following: the action(s) being taken by the department; the reason(s) for the action; the specific manual item which cites the legal base for an action or the regulation or law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. *Id.*, p. 3.

There was no evidence that MDHHS ever determined Petitioner's Medicaid eligibility. Accordingly, the denial of MA benefits was also improper due to MDHHS failing to issue proper written notice concerning Petitioner's Medicaid eligibility.

Petitioner's attorney noted an objection concerning the hearing's procedures. Specifically, Petitioner's attorney noted she was dissatisfied with the length of time spent waiting for a hearing.

Final action on hearing requests, including implementation of the decision and order (D&O), must be completed within 90 days. BAM 600 (July 2014), p. 7. The standard of promptness begins on the date the hearing request was first received by any local office or at DHS or MDCH central office. *Id.*, p. 9. MAHS has 59 days to schedule and conduct a hearing, render a decision and mail it to the local office, the client and the AHR. *Id.*

As it happened, the hearing was scheduled approximately 16 months after Petitioner requested a hearing. At this point in time, it is impossible for MDHHS to comply with any administrative order within the prescribed 90 day timeframe.

The remedy for a violation of standard of promptness is to complete the action. A hearing was held and an administrative order was issued. No further remedy is available to Petitioner.

Petitioner's attorney's testimony expressed anticipation that MDHHS may again deny Petitioner's application due to excess assets. Petitioner's attorney hinted at administrative "consideration" in the review of such a decision.

The jurisdiction of this hearing decision is limited to reviewing the actions taken by MDHHS which led to the filing of the hearing request. This hearing decision is unable to review anticipated MDHHS actions. If MDHHS again denies Petitioner's application, Petitioner's attorney is encouraged to again request a hearing.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for MA benefits. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) re-register Petitioner's application dated March 30, 2014, including the request for retroactive MA benefits from December 2013;
- (2) process Petitioner's application subject to the following findings:
 - a. MDHHS failed to properly request verifications from Petitioner's representative; and
 - b. MDHHS failed to determine Petitioner's Medicaid eligibility.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **12/16/2015**

Date Mailed: **12/16/2015**

CG/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

