



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: May 6, 2016  
MAHS Docket No.: 15-021532  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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 March 23, 2016, from Lansing, Michigan. Petitioner was represented by her son [REDACTED] and Attorney [REDACTED]. The Department was represented by Assistance Payments Supervisor [REDACTED] Long Term Care Worker [REDACTED] and Assistant Attorney General [REDACTED]. Department's Exhibits A-O (pages 1-139) were admitted. During this hearing it was decided that the Department failed to meet its initial burden of going forward with sufficient evidence to show this action was correct. Therefore, Petitioner's Exhibits were not necessary and were not admitted.

### **ISSUE**

Did the Department properly close Petitioner's Medical Assistance (MA) on December 1, 2015?

### **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 October 11, 2010, a Medical Assistance (MA) application was submitted for Petitioner as a patient of a nursing facility (Department's Exhibit J pages 88-93). The application: gave Petitioner's address as [REDACTED], [REDACTED] stated Petitioner had a "Home, life estate/life lease" with a value of \$ [REDACTED] stated Petitioner received Retirement Survivor Disability Income; showed Petitioner had no spouse; and stated Petitioner had a "rent, mortgage or

other shelter expense” of \$ [REDACTED] per month. Petitioner was approved and began receiving Medical Assistance (MA) [REDACTED] (LTC) benefits.

2. On December 5, 2013, [REDACTED] was sold.
3. On September 26, 2014, an application was submitted for re-determination of Petitioner’s ongoing Medical Assistance (MA) [REDACTED] (LTC) eligibility (Department’s Exhibit I pages 84-87). The application: stated Petitioner had no real property assets; stated that Petitioner had not sold, given away, or transferred ownership in any asset listed on the application within the last 60 months; that Petitioner had no “rent, mortgage or other shelter expense”; and stated Petitioner had no household expenses.
4. On September 30, 2015, an application was submitted for re-determination of Petitioner’s ongoing Medical Assistance (MA) [REDACTED] (LTC) eligibility (Department’s Exhibit H pages 80-83). The application: stated Petitioner had no real property assets; stated that Petitioner had not sold, given away, or transferred ownership in any asset listed on the application within the last 60 months; that Petitioner had no “rent, mortgage or other shelter expense”; and stated Petitioner had no household expenses.
5. On October 5, 2015, Petitioner’s September 30, 2015, application for re-determination of Petitioner’s ongoing Medical Assistance (MA) Long Term Care (LTC) eligibility was processed. [REDACTED] worker [REDACTED] recorded “LTC MA Redet processed, RDSI verified per SOLQ and [REDACTED] bank acct verified, PTF verified, homestead not verified” (Department’s Exhibit O page 139).
6. On October 5, 2015, a Verification Checklist (DHS-3503) was sent to Petitioner (Department’s Exhibit K pages 94 & 95). The checklist stated “Please submit proof of homestead and the current value. If this home has sold, please submit a signed and dated closing statement, proof of where funds were deposited and spent including any funeral contracts, burial plots, life insurance policies, trusts, etc.”
7. On October 6, 2015, [REDACTED] worker [REDACTED] spoke with Petitioner’s son, [REDACTED]. The Department was informed that the home was sold in December 2013 (Department’s Exhibit O page 139).
8. On October 15, 2015, LTC worker [REDACTED] met with Petitioner’s son, [REDACTED] and his spouse [REDACTED] to discuss the sale proceeds and expenses from the sale of the home (Department’s Exhibit O page 138). The Department was informed that [REDACTED] obtained a Home Equity Loan on [REDACTED] in 2001. That is before Petitioner’s first application of October 11, 2010 which stated Petitioner had a “Home, life estate/life lease” in the property. The Department was also informed that [REDACTED] applied for a mortgage on the property in 2011 to pay of the Home Equity Loan. The Department was also informed that the property was rented out from February 2011 until the sale in December 2013.

9. On October 15, 2015, another Verification Checklist (DHS-3503) was sent to Petitioner (Department's Exhibit L pages 96 & 97). The checklist stated "The due date has been extended. Please submit proof of 1) ownership of home equity loan X7020, mortgage X6639, personal loan X4033 including all payments & withdrawals and where these funds were spent, purpose of each loan 2) proof of rental income deposits and monthly expenses 3) proof of home sale proceeds and where these funds have been spent, the proceeds from the sale documents is \$ [REDACTED]. Thank you for all your time spent with me and helping me to try to understand this transaction." The rental income verifications would only be relevant to determining Petitioner's income and eligibility during a period prior to sale of the home in December 2013. These verifications are not required to determine Petitioner's Medical Assistance (MA) [REDACTED] (LTC) eligibility from September 30, 2015 ongoing.
10. On October 23, 2015, LTC worker [REDACTED] spoke with [REDACTED] and recorded "she understood and indicated the proofs that they are in the process of getting are going to be late because the person they requested the proofs from are out of town" (Department's Exhibit O page 138).
11. On November 2, 2015, LTC worker [REDACTED] recorded that she received a letter from Petitioner's attorneys. She also recorded "Proof of the withdrawals and expenses from the initial Home Equity Loan was not provided. Proof of the rental income account was not provided. . . . I am closing this case because I did not receive proof of the requested documents" (Department's Exhibit O page 138).
12. On November 2, 2015, Petitioner was sent a Health Care Coverage Determination Notice (DHS-1606) which stated that Petitioner was not eligible from December 1, 2015 ongoing (Department's Exhibit M pages 98-101). The comments section stated "Your Medicaid case has closed due to proof of the home equity withdrawals and expenses were used for Gladys' needs, nor proof of the rental income account to verify the income and expenses were provided. Proof of the mortgage was provided along with sale of the home. When you reapply, please refer to the verification checklist dated 10-16-15 which lists in detail the documentation required".
13. On November 12, 2015, Petitioner submitted a hearing request.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The 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. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The Department argues that closure of Petitioner's Medical Assistance (MA) was proper in accordance with Bridges Administration Manual (BAM) 130 Verification and Collateral Contacts because all the requested verifications were not provided in a timely manner. BAM 130 at pages 7 & 8 states:

### **Timeliness of Verifications**

#### **Medicaid**

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. Refer to policy in this item for citizenship verifications. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to two times.

At application, redetermination, ex parte review, or other change, explain to the client/authorized representative the availability of your assistance in obtaining needed information. Extension may be granted when the following exists:

The customer/authorized representative need to make the request. An extension should not automatically be given.

The need for the extension and the reasonable efforts taken to obtain the verifications are documented.

Every effort by the department was made to assist the client in obtaining verifications.

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email or MI Bridges document upload), the date of the transmission is the receipt date.

Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a MDHHS representative are considered to be received the next business day.

Send a case action notice when:

The client indicates refusal to provide a verification, **or**  
The time period given has elapsed.

However, the Department chooses to ignore all the requirements of BAM 130 which repeatedly state that the policy is applicable to required and current verifications. BAM 130 applies to processing current applications and re-determinations and states:

## **DEPARTMENT POLICY**

### **All Programs**

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

Required by policy. Bridges Eligibility Manual (BEM) items and MAGI policy specify which factors and under what circumstances verification is required.

Required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for Medicaid Assistance (MA).

Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level.

### **Types of Verification**

#### **All Programs**

Use documents, collateral contacts or home calls to verify information.

A **document** is a written form of verification. It may include a photocopy, facsimile or email copy if the source is identifiable.

#### **Medicaid**

Verification of identity is not required.

**Current** means the following:

**Income** documents must correspond to the period used to determine eligibility or benefit amount; see BEM 500, 501, 502, 503 and 504.

**Medical** documents must correspond to the period set by the Disability Determination Service (DDS) **or** to the date(s) stated on the document **if** DDS approval is not required.

**Other nonpermanent** documents are generally considered current if dated within 60 days before your eligibility determination. Older documents may be used if available information indicates the document remains current and there have been no changes in circumstances.

## **Obtaining Verification**

### **All Programs**

Tell the client what verification is required, how to obtain it, and the due date; see **Timeliness of Verifications** in this item. Use the DHS-3503, Verification Checklist (VCL), to request verification.

The client must obtain required verification, but the local office must assist if they need and request help.

The Department specified that verifications of home equity loan withdrawals and expenses between 2001 and 2011; and verification of rental income and expenses from February 2011 until December 2013 were not received and that is the reason Petitioner's Medical Assistance (MA) Long Term Care (LTC) was terminated.

Home equity loan withdrawals and expenses between 2001 and 2011 are not required to determine Petitioner's eligibility from September 30, 2015 ongoing. Any rental income and expenses from February 2011 until December 2013 are not current and are not required to determine Petitioner's eligibility from September 30, 2015 ongoing.

The Department also argued that they have to determine if there was any divestment in the past in order to determine Petitioner's Medical Assistance (MA) Long Term Care (LTC) eligibility from ongoing September 30, 2015 ongoing. Bridges Eligibility Manual (BEM) 405 MA Divestment provides:

## **DEPARTMENT POLICY**

### **Medicaid (MA) ONLY**

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Disabled Working Individuals (QDWI); see Bridges Eligibility Manual 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

Is within a specified time; see LOOK-BACK PERIOD in this item.

Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.

Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

During the penalty period, MA will **not** pay the client's cost for:

- Long Term Care (LTC) services.
- Home and community-based services.
- Home help.
- Home health.

MA will pay for other MA-covered services.

The Department's argument that a divestment determination is required to determine Petitioner's ongoing Medical Assistance (MA) [REDACTED] (LTC) eligibility is incorrect. The first sentence in BEM 405 states that divestment results in a penalty period during an MA eligible period, not ineligibility for MA. Petitioner's ongoing MA eligibility can be determined without knowing whether or not divestment occurred.

The Department requested the verifications of past income and assets activities out of concern that divestment or an over-issuance had occurred in the past. BAM 130 only provides authority to deny an application or close an assistance case when verifications required to determine initial or ongoing eligibility are not submitted. The verifications the Department requested are not required to determine Petitioner's Medical Assistance (MA) [REDACTED] (LTC) eligibility from September 30, 2015 ongoing.

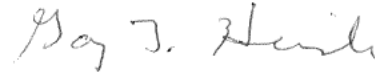
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed Petitioner's Medical Assistance (MA) on December 1, 2015.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's Medical Assistance (MA) re-determine Petitioner's Medical Assistance (MA) for the period beginning December 1, 2105 in accordance with Department policy and issue Petitioner a current notice of her re-determined eligibility.



GH/nr

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Gary Heisler  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

**Counsel for Respondent**



**DHHS**





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]