



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: December 5, 2016
MAHS Docket No.: 16-011678
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone conference hearing was held on November 16, 2016, from Lansing, Michigan. Attorney, [REDACTED] ([REDACTED]), who represented the Estate of [REDACTED] as a creditor for the [REDACTED] County Probate Court, appeared on behalf of Petitioner. Assistant Attorney General (AAG) [REDACTED] ([REDACTED]), represented the Department of Health and Human Services (Department). The Department offered the following persons as witnesses: [REDACTED] Family Independence Manager; [REDACTED] Eligibility Specialist; and [REDACTED] Eligibility Specialist.

The Department offered the following documents which were admitted into evidence as **Department's Exhibit 1**: Medicaid Application-Patient of Nursing Facility (DHS-4574) and Assets Declaration-Patient and Spouse (DHS-4574-B) received on April 27, 2016 (pages 1-8), Retroactive Medicaid Application (DHS-3243), received April 27, 2016 (pages 9-11), Health Care Coverage Determination Notice (DHS-1606) dated April 28, 2016 (pages 12-15), Health Care Coverage Determination Notice (DHS-1606) dated May 27, 2016 (pages 16-18), Medicaid Application-Patient of Nursing Facility (DHS-4574) signed on June 29, 2016 (pages 19-22), Assets Declaration-Patient and Spouse (DHS-4574-B) received on June 30, 2016 (pages 23-24), Retroactive Medicaid Application (DHS-3243) received June 30, 2016 (pages 25-27), Medical Determination Verification Checklist (DHS-3503-MRT) dated July 11, 2016 (pages 28-29), Medical-Social Questionnaire (DHS-49-F) dated July 11, 2016 (pages 30-33), Medical Records Request (DHS-1555-P) (page 34), Reimbursement Authorization (DHS-3975) (page 35), Recipient Liability Information (DHS-22-A) (page 36), Verification of Application or Appeal for SSI/RSDI (DHS-1552) (pages 37-38), Verification Checklist dated July 11, 2016 (pages 39-40), Authorized Representation (blank) (page 41), Medical-Social Questionnaire (DHS-49-F) dated July 11, 2016 (pages 42-45), Health Care Coverage

Determination Notice (DHS-1606) dated July 25, 2016 (pages 46-49), Email from [REDACTED] to [REDACTED] dated August 23, 2016 (page 50), Retroactive Medicaid Application (DHS-3243) received August 23, 2016 (pages 51-53), Request for Hearing (DHS-18) dated August 19, 2016 (pages 54-55), Hearing Summary (DHS-3050) dated August 22, 2016 (page 56), Letter from [REDACTED] to [REDACTED] dated August 29, 2016 (pages 57-58), and Notice of Hearing mailing date: September 27, 2016 (pages 59-60).

Petitioner did not offer any document exhibits into evidence. Petitioner's attorney filed a Prehearing Memorandum on November 14, 2016, but it was neither offered nor admitted as an exhibit.

During the hearing, the attorneys for both parties waived any time periods or time limits for the issuance of this decision, in order to allow for the submission of additional briefs. Thus, on November 17, 2016, the Administrative Law Judge issued an Interim Order which extended the time period for the Department to submit a post-hearing brief until November 30, 2016. Petitioner's attorney did not request the opportunity to file a post-hearing brief.

On November 28, 2016, the Department filed a document entitled, "Department's Response in Opposition to Petitioner's Prehearing Memorandum."

The record closed on November 30, 2016, as set forth in the Interim Order.

ISSUES

Did the Department properly determine Petitioner's eligibility for Long Term Care (LTC) Medical Assistance (MA) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was admitted to an LTC facility, known as the [REDACTED] (nursing home), on or about April 26, 2016. [Hearing Testimony].
2. On April 27, 2016, the Department received the following: Medicaid Application-Patient of Nursing Facility, Assets Declaration-Patient and Spouse, and Retroactive Medicaid Application (requesting unpaid medical bills from March, April, and May 2016). All three of these items were completed and signed by Petitioner's spouse. [Department's Exhibit 1, pp. 1-11].
3. On April 28, 2016, the Department mailed Petitioner a Health Care Coverage Determination Notice, which approved Petitioner for Medicaid effective April 1,

2016,¹ but denied eligibility for the Medicare Savings Program. [Dept. Exh. 1, pp. 12-15].

4. Petitioner deceased on [REDACTED]. [Hearing Testimony].
5. On May 27, 2016, the Department mailed a Health Care Coverage Determination Notice which determined that Petitioner was no longer eligible for Medicaid due to death. [Dept. Exh. 1, pp. 16-18].
6. On June 29, 2016, the Department received a Medicaid Application-Patient of Nursing Facility, Assets Declaration-Patient and Spouse, and Retroactive Medicaid Application (requesting unpaid medical bills from March, April, and May 2016) which were all completed and signed by [REDACTED] ("Petitioner's attorney"). [Department's Exhibit 1, pp. 19-27].
7. On July 5, 2016, Petitioner's attorney received Letters of Authority to act on behalf of the Estate of [REDACTED] (Petitioner).
8. On July 11, 2016, the Department mailed to Petitioner's residence a Medical Determination Verification Checklist, Medical-Social Questionnaire, Medical Records Request, Reimbursement Authorization, Recipient Liability Information, Verification of Application or Appeal for SSI/RSDI, and a Verification Checklist which requested several verifications including verifications for purposes of disability, income, life insurance, burial accounts, and assets. The Verification Checklist also indicated, "Per my supervisor we can not [sic] start the application process until we have a signed release from [REDACTED]. I have included the release for with all the paperwork." The verifications were due by July 21, 2016. [Dept. Exh. 1, pp. 28-45].
9. The Department did not receive any requested verifications or requests for extensions before the July 21, 2016, due date.
10. On July 25, 2016, the Department mailed a Health Care Coverage Determination Notice which indicated that Petitioner is not eligible for Medicare due to death and for failure to provide requested verifications. [Dept. Exh. 1, pp. 46-49].
11. On August 19, 2016, Petitioner's attorney requested a hearing concerning the July 25, 2016, denial. [Dept. Exh. 1, pp. 54-55].
12. On August 23, 2016, the Department received a Retroactive Medicaid application (without an accompanying Medicaid application) which sought retroactive Medicaid

¹ According to the Department, the automated computer system approved Petitioner's Medicaid application in error.

benefits from March, April, and May 2016 and was completed and signed by Petitioner's attorney. [Dept. Exh. 1, pp. 51-53].

13. The Department did not take any action concerning the August 23, 2016, application.
14. On August 29, 2016, the Michigan Administrative Hearing System (MAHS) mailed Petitioner (and Petitioner's attorney) a letter which indicated that the request for hearing cannot be processed until the MAHS receives legal authorization to act on behalf of a deceased person.
15. On September 14, 2016, Petitioner's attorney provided the MAHS with the July 5, 2016, Letters of Authority.
16. On November 14, 2016, Petitioner's attorney submitted a Prehearing Memorandum.
17. The hearing took place on November 16, 2016.
18. On November 17, 2016, the Administrative Law Judge assigned to the case sent an Interim Order which extended the record until November 30, 2016, so the Department may submit a post-hearing brief.
19. On November 28, 2016, the Department submitted the Department's Response in Opposition to Petitioner's Prehearing Memorandum.

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.

Medical Assistance (MA) is also referred to as "Medicaid." BEM 105 (1-1-2016), p. 1. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105, p. 1.

The Medicaid program is comprised of several sub-programs or categories. To receive Medicaid under an SSI²-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. BEM 105, p. 1.

Petitioner's Attorney as Authorized Representative

There are several issues that have been raised in the instant matter. The first issue that must be determined concerns whether Petitioner's attorney, [REDACTED], had the requisite authority to act on behalf of the Petitioner at the time of the June 29, 2016, Medicaid application. The record shows that Petitioner deceased on [REDACTED]. In that regard, Petitioner's attorney submits that she had been appointed as the Personal Representative of Petitioner's Estate and had communications with the Department in June 2016. Petitioner's attorney argues that the Department did not question her authority to act on Petitioner's behalf. Petitioner's attorney also contends that she submitted an application for LTC-Medicaid on June 29, 2016, and that the Department had no basis to deny that application due to lack of authority. The Department, on the other hand, contends that the Department did initially question the authority of Petitioner's attorney to act on Petitioner's behalf. According to the Department, Petitioner's attorney did not receive letters of authority to act on behalf of the Estate until July 5, 2016. The Department further argues that it sent verification requests on July 11, 2016, requesting documentation to confirm that Petitioner's attorney did, in fact, have legal authority to act on behalf of Petitioner's estate, but these verifications were not submitted.

Department policy requires that for all programs before an application is registered, it must be signed by the client or authorized representative. BAM 115 (1-1-2016), p. 2. The signature establishes that the client or AR understands their rights and responsibilities and that the application was prepared truthfully under penalty of perjury. BAM 115, pp. 2-3.

An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his (or her) behalf. BAM 110 (1-1-2016), p. 9. [Emphasis supplied].

For purposes of Medicaid, an application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, core relative or any other person provided the person is at least age 18 or married. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or core relative, the person must have authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian. BAM 110, p. 10. [Emphasis supplied].

² Supplemental Security Income.

The application form must be signed by the client or the individual acting as his (or her) authorized representative. BAM 110, p. 11. [Emphasis supplied].

BAM 110, p. 11, specifically indicates that when an assistance application is received in the local office without the applicant's signature or without a signed document authorizing someone to act on the applicant's behalf, the Department must do the following:

- Register the application as a request if it contains a signature.
- Send a DHS-330, Notice of Missing Information, to the individual explaining the need for a valid signature. The signature page of the application may be copied and sent to the agency or individual who filled out the application with the notice.
- Allow 10 days for a response. You cannot deny an application due to incompleteness until 10 calendar days from the date of your initial request in writing to the applicant to complete the application form or supply missing information, or until the initial scheduled interview.
- Record the date the application or filing form with the minimum information is received. The application must be registered and disposed of on Bridges, using the receipt date as the application date.

An application received from an agency is acceptable if it is signed by an individual and is accompanied by written documentation from the individual authorizing the agency to act as the authorized representative. BAM 110, p. 11.

For Medicaid, BAM 110, pp. 11-12, provides that an authorized representative must be one of the following: an adult child or stepchild, a core relative, designated in writing by the individual or court appointed or a representative of an institution (such as jail or prison) where the individual is in custody.

After a careful review of the record in this case, this Administrative Law Judge finds that Petitioner's attorney did not provide the Department with documentation to show that she was Petitioner's authorized representative before July 5, 2016. This record also does not show that Petitioner had designated in writing that [REDACTED] could serve as her authorized representative for purposes of pursuing Medicaid benefits. Pursuant to BAM 110, Petitioner's attorney was not the authorized representative and could not act on Petitioner's behalf for purposes of Medicaid benefits prior to July 5, 2016, when the letters of authority were issued.

The Department did not precisely follow policy in this regard. The Department should have registered the June 29, 2016, application, sent a DHS-330 Notice of Missing Information requesting the need for a valid signature, waited 10 days for a response and then disposed of the case on Bridges due to incompleteness after 10 days. BAM 110,

p. 11. Instead, the Department forwarded verification requests. Petitioner's attorney argues that the Department either consented or acquiesced, via email, to allow her to proceed on Petitioner's behalf. However, simply because the Department may have communicated with Petitioner's attorney via email and did not immediately reject the June 29, 2016, on that basis, it does not follow that Petitioner's attorney was authorized to act on Petitioner's behalf at this time. Petitioner's attorney must independently possess legal authorization to proceed on behalf of Petitioner. Based on the above analysis, Petitioner's attorney, before July 5, 2016, lacked the requisite authority to proceed on behalf of Petitioner, who had passed away on [REDACTED].

This Administrative Law Judge, after having carefully considered and weighed the testimony and other evidence in the record, finds that Petitioner's attorney did not become Petitioner's authorized representative until July 5, 2016, and that the Department was not required to process any prior application that the attorney submitted on Petitioner's behalf.

Verifications

Although the Administrative Law Judge finds that Petitioner's attorney lacked the requisite authority to submit an application for Medicaid on Petitioner's behalf prior to July 5, 2016, Petitioner's attorney argues that the Department should not have denied Medicaid eligibility due to failure to provide verifications. The Administrative Law Judge will address this issue for purposes of argument only. In this regard, the Department argues that Petitioner was not eligible for Medicaid because the requested verifications were never provided. Petitioner's attorney does not dispute that the verifications were never provided, but she contends that Petitioner's spouse was responsible as he was being difficult and refused to cooperate with her.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130, (1-1-2016) p. 1. For Medicaid, the Department shall allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. If the client cannot provide the verification despite a reasonable effort, [the Department may] extend the time limit up to two times. BAM 130, p. 8. [Additions provided]. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 10.

After a thorough review of the record, it is clear that the Department properly followed BAM 130 when it determined that Petitioner was not eligible for Medicaid due to failure to provide requested verifications. The applications that the Department had at the time were sent on June 29, 2016, and were signed by Petitioner's attorney who lacked proper authority at the time. Even if Petitioner's attorney had proper authority at the time, which she did not, the verification checklists that were sent on July 11, 2016, were due by July 21, 2016. There was no dispute that the 10-day time period to provide the requested verifications had expired and neither Petitioner, nor Petitioner's attorney, had provided the verification information. Although BAM 130, page 8, allows the Department

to grant at least two extensions, Petitioner's attorney did not request an extension. The fact that Petitioner's spouse may have been uncooperative with Petitioner's attorney concerning the verifications is of no consequence as Petitioner's attorney failed to provide the Department, at the time, that she had the requisite authority to act on the behalf of Petitioner's estate at the time.

Because Petitioner's attorney did not have the requisite authority to pursue Medicaid benefits on behalf of Petitioner's estate prior to July 5, 2016, the Department had not obligation to process the June 29, 2016 application. The undersigned acknowledges that Petitioner's attorney submitted another Retroactive Medicaid application on August 23, 2016. However, the request for hearing that was submitted in this matter concerned the June 29, 2016, applications and Health Care Coverage Determination Notice dated July 25, 2016. As a result, the August 23, 2016, application for Retroactive Medicaid is not properly before this Administrative Law Judge and the undersigned is without jurisdiction to address any dispute concerning the application. For the same reasons, Petitioner's attorney's arguments concerning whether Petitioner should have been afforded a chance to assign support rights or benefits is irrelevant and moot because Petitioner's attorney did not have authority at the time relevant to the hearing in this matter.

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 acted in accordance with Department policy when it determined that Petitioner was not eligible for Medicaid benefits.

DECISION AND ORDER

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

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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

DHHS

[REDACTED]

[REDACTED]

Counsel for Respondent

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]