



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: July 1, 2020
MOAHR Docket No.: 20-001925
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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; 42 CFR 438.400 to 438.424; 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 June 29, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

ISSUE

Did the Department properly determine Petitioner's husband's Medical Assistance (MA) eligibility?

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 [REDACTED], 2019; [REDACTED], 2019; and [REDACTED] 2020, Petitioner submitted an application on behalf of herself and her husband.
2. On March 11, 2020, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her husband was approved for Emergency Services Only (ESO) MA effective November 1, 2019, ongoing (Exhibit A, pp. 31-34).
3. Petitioner submitted a request for hearing disputing the Department's actions related to her and her husband's MA benefits.

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.

In this case, Petitioner requested a hearing, in part, to dispute the Department's decision regarding her MA benefits. Petitioner stated that the Department sent her notice stating that she was eligible for MA benefits subject to a deductible. The Department stated that a HCCDN was sent to Petitioner on October 15, 2019, informing her that she was eligible for MA benefits subject to a monthly deductible. On March 11, 2020, the Department sent Petitioner a HCCDN informing her that she was approved for full-coverage MA benefits effective November 1, 2019, ongoing.

Per Department policy, the Michigan Office of Administrative Hearings and Rules may grant a hearing about any of the following: (i) denial of an application and/or supplemental payments; (ii) reduction in the amount of program benefits or service; (iii) suspension or termination of program benefits or service; (iv) restrictions under which benefits or services are provided; (v) delay of any action beyond standards of promptness; or (vi) for FAP only, the current level of benefits or denial of expedited service. BAM 600 (April 2018), p. 5. Department policy also provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. BAM 600, p. 6.

Petitioner submitted her request for hearing on [REDACTED] 2020. Petitioner did not submit a timely hearing request to dispute the Department's decision to place her in an MA program subject to a deductible. Additionally, the Department presented the HCCDN sent to Petitioner on March 11, 2020, and Petitioner's Eligibility Summary, showing that she was approved for full-coverage MA benefits effective November 1, 2019, ongoing (Exhibit A, pp.29-44). The Department resolved the issue for which Petitioner requested a hearing. Therefore, the issue is moot and there is no justiciable issue.

For the above stated reasons, Petitioner's request for hearing related to her MA benefit case is **DISMISSED** for lack of jurisdiction.

Petitioner also requested a hearing related to her husband's MA case. The Department testified that Petitioner's husband had submitted MA applications on [REDACTED], 2019; [REDACTED], 2019; and [REDACTED], 2020. On [REDACTED] 2019, the Department sent Petitioner a HCCDN informing her that her husband was eligible for ESO MA effective November 1, 2019, ongoing.

To be eligible for full MA coverage a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225 (July 2017), p. 2. However, citizenship/alien status is not an eligibility factor for ESO MA. BEM 225, p. 2. MA coverage is limited to ESO for any: (i) persons with certain alien statuses or U.S. entry dates; (ii) persons refusing to provide citizenship/alien status information on the application; and (iii) person unable or refusing to provide satisfactory verification of alien information. BEM 225, p. 3. The following individuals meet the qualified alien status to receive full coverage MA benefits: (i) qualified military aliens; (ii) qualified spouses and unmarried dependent children of military aliens; (iii) holder of one of the following immigration statuses: permanent resident alien with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee); refugee admitted under INA Section 207; granted asylum under INA Section 208; Cuban/Haitian entrants; Amerasians under P.L. 100-202; and victims of trafficking under P.L. 106-386 of 2000. BEM 225, pp. 6-7. Individuals with the following immigration status are limited to ESO services for the first five years in the U.S.: (i) an alien who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States; (ii) an alien whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h); and (iii) permanent resident aliens with a class code on the I-551 other than RE, AM or AS. BEM 225, p. 8. The following individuals are only eligible for ESO MA: (i) aliens paroled into the U.S. for less than one year under INA Section 212(d)(5); (ii) non-immigrant--an alien temporarily in the U.S. for a specific purpose (for example, student, tourist); and (iii) persons who do not meet any of the MA citizenship/alien statuses above. This includes, for example, undocumented aliens and non-immigrants who have stayed beyond the period authorized by USCIS. BEM 225, p. 10.

The Department testified that Petitioner reported in her MA applications that her husband was a U.S. Citizen and that he had a naturalization certificate. Additionally, Petitioner reported that her husband's date of entry into the U.S. was September 30, 2014. The Department stated that no request for verification was made to verify Petitioner's husband's immigration status.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For MA cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. If the client cannot provide the verification despite a reasonable effort, the Department will extend

the time limit up to two times. BAM 130, p. 8. The Department sends a negative action notice when: the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

Petitioner's husband is potentially eligible for full-coverage MA benefits, as he is purportedly a U.S. citizen and he has been in the U.S. for more than five years. The Department erred when it did not request verification of Petitioner's husband's immigration status and consider his eligibility for full-coverage MA. Therefore, the Department failed to establish that it acted in accordance with policy when it considered Petitioner's husband's MA eligibility.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's husband's MA eligibility.

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

Petitioner's request for hearing related to her MA benefit case is **DISMISSED**.

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. Redetermine Petitioner's husband's MA eligibility as of November 1, 2019, ongoing;
2. Provide Petitioner's husband with MA benefits he is entitled to receive; and
3. Notify Petitioner of its MA decision in writing.

EM/tm



Ellen McLemore

Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS

Susan Noel
26355 Michigan Ave
Inkster, MI
48141

Petitioner

[REDACTED]
[REDACTED]
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[REDACTED]

cc: ME—D. Smith; EQADHShearings
AP Specialist-Wayne County