



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 28, 2017
MAHS Docket No.: 17-013144
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 November 27, 2017, from Lansing, Michigan. The Petitioner was represented by the Authorized Hearing Representative (AHR)/Counsel, [REDACTED] from [REDACTED]. [REDACTED] Regional Accounts Receivable Supervisor from [REDACTED]; [REDACTED] Accounts Receivable Director from [REDACTED]; and [REDACTED] Benefits Specialist from [REDACTED]., testified as a witnesses for Petitioner. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) [REDACTED] from the Michigan Department of Attorney General. [REDACTED], Assistant Payment Supervisor; and [REDACTED], Assistant Payment Worker, testified as a witnesses for the Department.

ISSUE

Did the Department properly process Petitioner's Medical Assistance (MA) applications dated June 22, 2016, and November 21, 2016?

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 June 22, 2016, Petitioner's authorized representative (AR), [REDACTED] from [REDACTED], submitted a Medicaid Application – Patient of Nursing Facility (DHS-4574), retroactive to March 2016, on behalf of the Petitioner. [Exhibit B, pp. 1-8 and 15.]

2. On August 30, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that her MA application was denied effective March 1, 2016, ongoing, based on failure to comply with the verification requirements. [Exhibit B, pp. 19-22.]
3. On August 30, 2016, the Department sent [REDACTED] (named court appointed guardian/conservator on application) a determination notice notifying her that Petitioner's MA application was denied effective March 1, 2016, ongoing, based on failure to comply with the verification requirements. [Exhibit B, pp. 2 and 23-26.]
4. The Department failed to send Petitioner's AR, [REDACTED], a determination notice concerning the denial of her MA application dated June 22, 2016.
5. On November 21, 2016, Petitioner's AR, [REDACTED] from [REDACTED], submitted another Application for Health Care Coverage Patient of Nursing Facility, retroactive to August 2016, on behalf of the Petitioner. [Exhibit B, pp. 27-35.]
6. On January 23, 2017, the Department sent Petitioner a determination notice notifying her that her MA application was denied effective August 1, 2016, based on her failure to comply with the verification requirements. [Exhibit B, pp. 42-44.]
7. The Department failed to send Petitioner's AR, [REDACTED], a determination notice concerning the denial of her MA application dated November 21, 2016.
8. On October 2, 2017, Petitioner's AHR filed a hearing request, protesting the Department's failure to process the MA applications. [Exhibit A, pp. 5-14.]

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.

Preliminary matters

First, the Department's representative, [REDACTED], moved for dismissal of this matter based on a lack of jurisdiction because there was no authorization by Petitioner's guardian ([REDACTED] and/or Family Option Services) authorizing [REDACTED], from [REDACTED] to represent Petitioner as the Authorized Hearing Representative (AHR). However, the undersigned Administrative Law Judge (ALJ) disagrees. Specifically, the undersigned finds that there was credible evidence, including credible testimony by Petitioner's guardian, [REDACTED] from [REDACTED], showing that [REDACTED] was authorized to represent Petitioner as the AHR. [Exhibit A, pp. 10-14.] Therefore, the undersigned DENIED the Department's request for dismissal of this matter because the AHR has proper authorization to present Petitioner in the hearing process. See BAM 600 (October 2016), pp. 1-6.

Second, on October 18, 2017, the Michigan Administrative Hearing System (MAHS) sent Petitioner a letter indicating that it appears as though the appeal may be untimely concerning the issues that the AHR raised. As such, the second issue presented to the undersigned is to determine if whether the hearing request was timely.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2015; October 2016; and October 2017), p. 6. The request must be received in the local office within the 90 days. BAM 600, p. 6.

The hearing request in this case was obviously not received in the local office within 90 days of the determination notices dated August 30, 2016, and January 23, 2017. [Exhibit B, pp. 19-26 and 42-44.] However, the Department failed to send the AR, Ms. Blocker, both determination notices. An AR is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf (for example, to obtain FAP benefits for the group). BAM 110 (July 2016 and January 2017), p. 9. The AR assumes all the responsibilities of a client. BAM 110, p. 9. AR's must give their name, address, and title or relationship to the client. BAM 110, p. 9. To establish the client's eligibility, they must be familiar enough with the circumstances to complete the application, answer interview questions, and collect needed verifications. BAM 110, p. 9.

The AR clearly applied for the MA benefits for both applications on behalf of the Petitioner. [Exhibit B, pp. 1-8, 15, and 27-35.] Therefore, the Department must also send correspondence to the AR as they assume all the responsibilities of the client. See BAM 110, p. 9. The AR and/or Petitioner would be unable to file a timely hearing request in this instance because the AR never received the determination notices. Because the Department failed to send the AR both determination notices in this case, the undersigned finds that Petitioner's/AHR's hearing request is timely.

Third, it was discovered that Petitioner applied again for MA benefits on August 30, 2017 and she was subsequently denied on September 20, 2017. [Exhibit A, p. 1.] However, Petitioner's AHR failed to dispute the denial of this application in the hearing

request received on October 2, 2017. [Exhibit A, pp. 5-8.] As such, the undersigned lacks any jurisdiction to address Petitioner's MA application dated August 30, 2017.

MA applications

The Department determines eligibility and benefit amounts for all requested programs. BAM 105 (April 2016 and October 2016), p. 18. The Department registers a signed application or filing form, with the minimum information, within one workday for all requested programs. BAM 110, p. 19.

The standard of promptness (SOP) begins the date the department receives an application/filing form, with minimum required information. BAM 115 (July 2016 and January 2017), p. 15. For MA applications, the Department certifies the program approval or denial of the application within 45 days. BAM 115, p. 15. However, there are exceptions to these benefits programs for processing times, which are described as follows: 90 days for MA categories in which disability is an eligibility factor. BAM 115, pp. 15-16. The SOP can be extended 60 days from the date of deferral by the Medical Review Team (MRT). BAM 115, pp. 15-16.

Moreover, if the group is ineligible or refuses to cooperate in the application process, the Department must certify the denial within the standard of promptness and also send a DHS-1605, Client Notice, or the DHS-1150, Application Eligibility Notice, with the denial reason(s). BAM 115, p. 23. Medicaid denials receive a DHS-1606, Health Care Coverage Determination Notice. BAM 115, p. 23. If approved, the Department sends the DHS-1605 detailing the approval at certification of program opening. BAM 115, p. 24. The Department sends the DHS-1606 detailing Medicaid approvals. BAM 115, p. 24.

Based on the foregoing information and evidence, the Department failed to properly process Petitioner's MA applications dated June 22, 2016, and November 21, 2016. The evidence presented that the Department failed to send the determination notices dated August 30, 2016, and January 23, 2017 to the AR at the same time it sent it to the Petitioner. [Exhibit B, pp. 19-26 and 42-44.] The AR assumes all the responsibilities of a client and the Department failed to send the denial notices to the AR in this case. See BAM 110, p. 9. Because the Department failed to send the AR the denial notices in accordance with Department policy, it failed to properly process the applications. See BAM 105, p. 18; BAM 110, pp. 9 and 19; and BAM 115, pp. 15 and 22-24.

It should be noted that the undersigned concluded that the AHR's hearing request is based on a failure to process argument because the AR never received the denial notices. [Exhibit A, pp. 5-8.] Therefore, the undersigned will not determine if whether the verifications were submitted timely. As stated above, the Department failed to send the AR the denial notices in accordance with Department policy; thus, the Department will reprocess the MA applications dated June 22, 2016, and November 21, 2016.

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 did not act in accordance with Department policy when it improperly processed Petitioner's MA applications (Nursing Facility) dated June 22, 2016, and November 21, 2016.


Accordingly, the Department's MA decisions are **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. Re-register and initiate reprocessing of Petitioner's MA applications (Nursing Facility) dated June 22, 2016, and November 21, 2016;
2. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not in accordance with Department policy; and
3. Notify Petitioner and the authorized representative of its decision.

IT IS FURTHER ORDERED that the Department's request for dismissal of this matter is **DENIED**.

EF/nr


Eric J. Feldman
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]

Counsel for Respondent

[Redacted]

Petitioner

[Redacted]

Counsel for Petitioner

[Redacted]