



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 30, 2017
MAHS Docket No.: 17-013507
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 her Authorized Hearing Representative (AHR)/Counsel, [REDACTED]. Petitioner was also present at the hearing and provided testimony. The Department of Health and Human Services (Department) was represented by [REDACTED] Assistant Payment Supervisor; and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's retroactive Medical Assistance (MA) application for December 2015, January 2016, and February 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 February 28, 2017, Petitioner submitted a retroactive MA application for December 2015, January 2016, and February 2016. [Exhibit A, p. 7-9.]
2. On August 29, 2017, the Department sent Petitioner/AHR a Verification Checklist (VCL) requesting verification of the following accounts for the retro months of December 2015 to February 2016: (i) individual retirement account (IRA) [REDACTED]; (ii) [REDACTED] stocks/mutual funds account [REDACTED]; (iii) [REDACTED] and (iv) [REDACTED]. The verifications were due back by September 8, 2017. [Exhibit A, pp. 10-11.]

3. On September 15, 2017, the Department sent Petitioner/AHR a Health Care Coverage Determination Notice (determination notice) notifying Petitioner that her MA benefits were denied from December 1, 2015 to January 31, 2016 because she was not blind, disabled, pregnant, parent/caretaker relative of a dependent child or meet age requirements; and she was denied MA benefits for February 1, 2016 to February 29, 2016 because verification of stocks and bank account checking for Petitioner were not returned. [Exhibit A, p. 12.]
4. On October 12, 2017, Petitioner's AHR filed a hearing request, protesting the Department's action. [Exhibit A, pp. 4-6.]

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 matter

At the commencement of the hearing, the Department requested an adjournment to obtain Attorney General Representation because Petitioner was represented by an attorney. Policy states that the Attorney General's Office requires a two-week notice prior to the date of the hearing. BAM 600 (October 2017), p. 4. If there is less than two weeks' notice, make a request for adjournment to the Michigan Administrative Hearing System (MAHS) for the purpose of arranging legal representation. BAM 600, p. 4. Make a request for representation even if a hearing date is not received. BAM 600, p. 4. Policy further states that all requests for adjournment should be in writing to MAHS and must include a specific reason for the request unless exception #1 or #2 applies from BAM 600 (exceptions not applicable in this case). BAM 600, p. 12.

In this case, the Department requested Attorney General Representation less than two weeks' notice prior to the date of the hearing and per policy, meant that the Department would have to request an adjournment of the hearing from MAHS. However, pursuant to the above policy, adjournments should be writing, which the Department failed to do so in this case. See BAM 600, p. 12. As such, the undersigned Administrative Law Judge (ALJ) denied the Department's adjournment request and the hearing proceeding accordingly.

Retroactive MA applications

The DHS-3243, Retroactive Medicaid Application, is used along with the DHS-4574 or DCH-1426 for retro MA applications. BAM 110 (January 2017), p. 4. Only one DHS-3243 is needed to apply for one, two or three retro MA months. BAM 110, p. 4.

Retro MA coverage is available back to the first day of the third calendar month prior to the criteria listed in BAM 115. BAM 115 (July 2017), pp. 11-12. A person might be eligible for one, two or all three retro months, even if not currently eligible. BAM 115, p. 12. The Department determines eligibility for each retro MA month separately. BAM 115, p. 14.

In this case, on February 28, 2017, Petitioner submitted a retroactive MA application for December 2015, January 2016, and February 2016. [Exhibit A, p. 7-9.] However, the Department did not process the application until several months later. On August 29, 2017, the Department sent Petitioner/AHR a VCL requesting verification of the following accounts for the retro months of December 2015 to February 2016: (i) individual retirement account ([REDACTED] (ii) [REDACTED] stocks/mutual funds account # [REDACTED] (iii) [REDACTED]; and (iv) [REDACTED]. The verifications were due back by September 8, 2017. [Exhibit A, pp. 10-11.] During the hearing, though, the Department indicated that it already had the necessary verifications from a previous application concerning the [REDACTED] stocks/mutual funds account [REDACTED], and the [REDACTED]. As a result, the only verification at issue for the retro months was the IRA [REDACTED]. Nevertheless, the Department argued that it still did not have the necessary verifications for the IRA [REDACTED] (hereinafter referred to as "IRA account").

In regards to the IRA account, the Department testified that it did not receive the verifications by due date. On September 14, 2017, the Department indicated that it received an e-mail request to review the retroactive MA application denial from the AHR because it was the AHR's understanding that the documents requested were previously provided. [Exhibit A, p. 2.] In the e-mail, the Department testified that were attachments, which included verification of the IRA account for the period of October 1, 2015 to December 31, 2015 and a December 2016 statement. [Exhibit A, p. 2.] The Department testified that the first time it received any verification of the IRA account was on September 14, 2017. The Department testified that it did not receive any verification of the account for the retroactive months of January 2016 and February 2016. Overall, the Department argued that Petitioner failed to submit verification of the IRA account before the due date of September 8, 2017. Furthermore, the Department claimed that Petitioner only provided partial verification of the account because she failed to include the verification for the retroactive months of January 2016 and February 2016. As such, the Department argued that the denial of Petitioner's retroactive MA application should be affirmed.

It should be noted that the Department provided as evidence verification of the IRA account for the period of October 1, 2015 to December 31, 2015 and a December 2016 statement. [Exhibit 1, pp. 1-2.] A review of the IRA account shows that Petitioner had a zero dollar balance for the period October 1, 2015 to December 31, 2015, and a zero dollar balance as of December 13, 2016. [Exhibit 1, pp. 1-2.]

In response, the AHR argued that verification of the IRA account for the period of October 1, 2015 to December 31, 2015 was provided by Petitioner's Nursing Facility via fax back in April of 2016. The AHR further believed that the same verification for the IRA account was provided with the retroactive application. The AHR acknowledged that verification of the IRA account for the requested retroactive months of January 2016 and February 2016 were not provided. However, the AHR argued that the IRA account had a zero dollar balance for the months of January 2016 and February 2016. The AHR stated that the Department should have used the best available information from the IRA statement provided for the period of October 2015 to December 2015, to infer that the account also had a zero dollar balance for January 2016 and February 2016. In fact, Petitioner testified that the IRA account had a zero dollar balance during the retroactive months requested in this case. As such, the AHR argued that the denial of Petitioner's retroactive MA application should be reversed.

Based on the foregoing information and evidence, the Department did not act in accordance with Department policy when it improperly denied Petitioner's retroactive MA application dated February 28, 2017, for the period of December 1, 2015 to February 29, 2016.

First, the undersigned finds the AHR's argument persuasive that the Department already had verification of the IRA statement for the period of October 2015 to December 2015 before it requested it via the VCL. The undersigned finds this argument credible because the Department already had verification of Petitioner's three other accounts that were provided with a previous application (i.e. the [REDACTED] stocks/mutual funds) and therefore, the undersigned finds it reasonable to conclude that Petitioner would have also provided proof of the IRA statement back in April 2016 and/or with the prior application. And because the undersigned finds the AHR's argument persuasive, the Department should have used the best available information from the IRA statement provided for the period of October 2015 to December 2015, to infer that the account also had a zero dollar balance for January 2016 and February 2016. Policy states that the client must obtain required verification, but the local office must assist if they need and request help. BAM 130 (April 2017), p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. BAM 130, p. 3. If no evidence is available, use your best judgment. BAM 130, p. 3. Pursuant to the above policy, the Department had evidence that Petitioner's IRA account had a zero dollar balance for the retro month of December 2015; therefore, the Department could have used the best available information provided by Petitioner to conclude that Petitioner also had a zero dollar balance for the remaining retro months requested for January and February of 2016. As such, the undersigned finds that the Department improperly denied Petitioner's retroactive MA application.

Second, for verification purposes, policy also states that “current” means the following:

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.

BAM 130, p. 2. It was not disputed that the Department did not receive verification of the IRA account concerning the retro months of January 2016 and February 2016, but, pursuant to the above policy, the Department technically had current verification of the IRA account. Petitioner provided verification of the IRA account for October 2015 to December 2015, which showed a zero dollar balance. [Exhibit 1, p. 1.] Therefore, this document was dated within 60 days of the remaining retro months requested for January and February of 2016; thus, making it a current verification for the remaining retro months. As such, the undersigned finds that the Department had proper verification of the IRA account for the retro months of December 2015 to February 2016 and therefore, the Department improperly denied Petitioner’s retroactive MA application in accordance with Department policy.

Third, it should be noted that the undersigned had concerns with the denial reasons with the determination notice generated on September 15, 2017. [Exhibit A, p. 12.] For example, the Department indicated that the denial of the retroactive MA application was based on failure to comply with the verification requirements; yet, the determination notice did not indicate this as the specific denial reason for the period of December 2015 to January 2016. [Exhibit A p. 12.] Therefore, the undersigned finds that the Department issued an improper determination notice in accordance with Department policy. See BAM 220 (July 2017), pp. 2-3 (A notice of case action must specify the following the actions(s) being taken by the department and the reason(s) for the action).

Accordingly, the undersigned finds that the Department did not act in accordance with Department policy when it improperly denied Petitioner’s retroactive MA application dated February 28, 2017, for the period of December 1, 2015 to February 29, 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 denied Petitioner’s retroactive MA application dated February 28, 2017, for the period of December 1, 2015 to February 29, 2016.


Accordingly, the Department’s MA 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. Initiate re-registration and reprocessing of Petitioner's retroactive MA application dated February 28, 2017, for the period of December 1, 2015 to February 29, 2016;
2. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from December 1, 2015 to February 29, 2016; and
3. Notify Petitioner of its decision.

IT IS ALSO ORDERED that the Department's adjournment request 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 Petitioner

[REDACTED]

Petitioner

[REDACTED]