



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 10, 2018
MAHS Docket No.: 18-001775
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 5, 2018, from Detroit, Michigan. Petitioner did not appear and was represented by her attorney, [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], assistant attorney general. [REDACTED], hearing facilitator, and [REDACTED] specialist testified on behalf of MDHHS.

ISSUE

The issue is whether Petitioner timely requested a hearing to dispute 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 May 12, 2017, Petitioner submitted to MDHHS an Application for Health Coverage Patient of Nursing Care Facility and a Retroactive Medicaid Application.
2. On June 20, 2017, MDHHS issued a Health Care Coverage Determination Notice. The notice listed separate denials of Petitioner's MA eligibility for April 2017 and May 2017. Both denials stated, "The value of your countable assets is higher than allowed for this program." Both denials listed BEM 400 as a specific basis for denial. Both listed denials also cited BAM 105, 115, 130, 210, 220 and BEM 400.

3. BEM 400 lists the asset limits for MA eligibility.
4. On February 13, 2017, MDHHS received Petitioner's request to dispute the denials of MA benefits from April 2017 and May 2017.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's attorney requested a hearing to dispute a denial of MA eligibility from May 2017, including a retroactive Medicaid month of April 2017. MDHHS contended that Petitioner's hearing request was untimely, and therefore, should be dismissed.

MDHHS presented a Health Care Coverage Determination Notice (Exhibit A, pp. 13-16) dated June 20, 2017. Petitioner's hearing request was not disputed to have been received by MDHHS on February 13, 2018 (approximately 238 days after written notice was issued).

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing.¹ The request must be received in the local office within the 90 days...²

Based on the mailing date of written notice and Petitioner's hearing request submission date, Petitioner's hearing request was untimely. Petitioner's attorney contended that hearing request timeliness rules are only triggered when written notice is proper; this was not disputed. Petitioner's attorney further contended that the notice sent by MDHHS to Petitioner was improper; this was disputed.

Upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action.³ The notice of case action is printed and mailed centrally from the consolidated print center.⁴ A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.

¹ BAM 600 (January 2018), p. 2

² *Id.*

³ BAM 220 (July 2017) p. 2

⁴ *Id.*

- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.⁵

Petitioner's attorney contended that the written notice at issue was improper due to the absences of "a specific manual item" and/or reason for MA denial. The second page of the written notice issued to Petitioner unequivocally included specific manual items and a stated reason for action. Petitioner's attorney's contention appeared to be based on a submission from Petitioner's former attorney (see (Exhibit A, pp. 26-28) which included the written notice minus the second page of the notice.

The Health Care Coverage Determination Notice dated June 20, 2017, is found to have included all required information. Thus, the written notice at issue was proper. As MDHHS' written notice was proper, Petitioner's untimely hearing request precludes consideration of the merits of Petitioner's claim.

Petitioner's attorney alternatively alleged that MDHHS' policy failed to comport with federal and/or State of Michigan requirements. Petitioner's attorney contended that the alleged failure of MDHHS policy to comport with federal and/or state requirements renders the written notice invalid and justified reversal of Petitioner's MA application. Petitioner's attorney's contention was unpersuasive, in part, because the requested remedy exceeds the authority of an administrative law judge.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether MDHHS policy was appropriately applied.⁶ The ALJ issues a final decision unless... [t]he ALJ believes that the applicable law does not support MDHHS policy... [or] MDHHS policy is silent on the issue being considered.⁷ In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision.⁸

If it was found that MDHHS policy did not comply with federal or state law, this decision would be limited to recommending a reversal of Petitioner's application denial. The merits of Petitioner's attorney's contention do not justify a recommended decision.

Petitioner's former attorney cited 42 CFR § 435.913 as support that MDHHS policy fails to comply with federal regulations (see Exhibit A, p. 19). The regulation was cited as follows:

The agency must send each applicant a written notice of the agency's decision, on his application, and if eligibility is denied, for **the reasons for**

⁵ *Id.*, pp. 2-3

⁶ BAM 600 (April 2017), pp. 38-39

⁷ *Id.*, p. 39

⁸ *Id.*

the action, the specific regulation supporting the action, and an explanation of his right to a hearing.

Petitioner's attorney contended that a policy manual chapter is not a regulation; no basis for the contention was presented. Petitioner's attorney's contention merits no response beyond a statement that MDHHS policies are regulations. For this reason, a recommended decision that MDHHS reverse the denial of Petitioner's MA eligibility will not follow.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely dispute a denial of MA eligibility related to a written notice dated June 20, 2017. Petitioner's hearing request is **DISMISSED**.

CG/



Christian Gardocki

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

Via Email

[REDACTED]
[REDACTED]

Counsel for Respondent

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

Via USPS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner