



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 3, 2019
MOAHR Docket No.: 19-005363
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 26, 2019, from Detroit, Michigan. Petitioner was represented by her husband, [REDACTED]. The Department of Health and Human Services (Department) was represented by Gena Harrington, Eligibility Specialist. During the hearing, a 38-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-38.

ISSUE

Did the Department properly close Petitioner's Medicaid (MA) case under the Medicare Savings Program (MSP) and Extended-Care (EC) categories, effective June 1, 2019?

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 an ongoing recipient of MA benefits from the Department under the MSP and EC categories.
2. As part of the Redetermination process, the Department issued to Petitioner a March 12, 2019 Verification Checklist requesting information necessary to determine Petitioner's asset eligibility for continuing benefits. The requested information was due on March 22, 2019. Exhibit A, pp. 21-25.

3. On March 22, 2019, Petitioner's husband, [REDACTED], hand-delivered the requested documents to the Department. When he arrived at the office, he attempted to turn them into the front desk. However, the front desk would not accept the submissions. [REDACTED] was directed to use the on-site fax machine to submit his documents to a Department fax machine located in [REDACTED] Michigan. [REDACTED] followed the instructions and faxed the required documents.
4. On April 26, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefits under the MSP and EC categories were closing, effective June 1, 2019, due to Petitioner's alleged failure to provide the requested asset-related verifications. Exhibit A, pp. 33-34.
5. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's April 26, 2019 Health Care Coverage Determination Notice.

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's MA benefits under the MSP and EC categories were cut off, effective June 1, 2019 as a result of the Department's finding that Petitioner did not timely provide requested verifications related to Petitioner's assets. Petitioner submitted a timely hearing request objecting to the Department's action and stating that the requested verifications were, in fact, provided in a timely manner.

To be eligible for either MSP or EC, a client must have countable assets below the threshold applicable to each program. BEM 165 (January 2018), p. 8; BEM 164 (April 2017), p. 2. Verification of eligibility-related factors are usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130, 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. The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130, p. 7. Verifications are considered to be timely if received by the date

they are due. BAM 130, p. 7. For electronically transmitted verifications (fax, email or MI Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 7. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a Department representative are considered to be received the next business day. BAM 130, p. 7. 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 MSP and EC benefits were cut off, effective June 1, 2019, because of the Department's conclusion that Petitioner did not timely respond to the Department's March 12, 2019 Verification Checklist related to Petitioner's assets. The verifications were due on March 22, 2019. Based on the record presented, the Department's action was not justified by law and Department policy because Petitioner's witness credibly testified during the hearing that he provided the requested verification on March 22, 2019 in person at a Department office. The witness' credibility is based on the consistency of his testimony with the documentation in the record and his detailed recollection of the process the Department required in order to submit the documents, a process confirmed by the Department witnesses. The Department may only take negative action when there's either a refusal to provide information or the deadline passes without the client having made a reasonable effort to provide the verifications. As neither of the conditions for a negative action were present, the Department was prohibited from issuing the April 26, 2019 Health Care Coverage Determination Notice closing Petitioner's MSP and EC benefits, effective June 1, 2019.

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 closed Petitioner's MA benefits under the MSP and EC categories, effective June 1, 2019.

DECISION AND ORDER

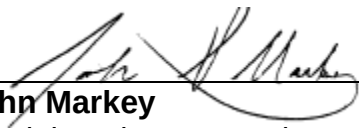
Accordingly, the Department's decision is **REVERSED**.

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. Reinstate Petitioner's MA coverage under the MSP and EC categories, effective June 1, 2019;
2. If there are any eligibility-related factors that are unclear, incomplete, inconsistent, or contradictory, issue to Petitioner requests for verification pursuant to Department policy;

3. If Petitioner is eligible for additional benefits that were not received, promptly ensure that a supplement is provided; and
4. Notify Petitioner in writing of its decisions.

JM/cg


John Markey
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

Via Email:

MDHHS-Oakland-2-Hearings
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]