



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 5, 2019
MOAHR Docket No.: 19-007116
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 August 8, 2019, from ██████████ Michigan. Petitioner was not present for the hearing. Petitioner was represented by her Authorized Hearing Representative (AHR)/Power of Attorney (POA) ██████████ who was present with ██████████ from ██████████ Medical Facility. The Department of Health and Human Services (Department) was represented by Michael O'Brien, Payments Program Manager.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) benefits on the basis that she failed to return requested verification of assets?

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 or around ██████████ 2019, Petitioner's Power of Attorney (POA) submitted an application for Health Care Coverage Patient of Nursing Facility (DHHS-4574) with a request for retroactive coverage to January 2019 (Application) on Petitioner's behalf. (Exhibit B pp. 11-20; Exhibit C)
2. Petitioner signed the Application herself, as there was no section to complete that would authorize another individual to act on Petitioner's behalf as Authorized Representative (AR). (Exhibit B, pp. 11-20)

3. Included with the Application was a copy of the POA, authorizing Ms. [REDACTED] to act on Petitioner's behalf. (Exhibit C)
4. On the Application, Petitioner disclosed that she had a patient trust fund account with a value of \$148.14. Attached to the Application, Petitioner provided the Department with a printout showing a current balance of resident funds in the amount of \$148.14. (Exhibit B, pp. 6-7,13)
5. In connection with the Application, on May 3, 2019, the Department sent Petitioner a Verification Checklist (VCL) instructing her to submit proof of her assets by May 13, 2019. The VCL instructed Petitioner to provide a copy of the patient trust fund statements showing balances for each month of January, February, March, and April 2019. The VCL was not sent to Petitioner's POA, Ms. [REDACTED] (Exhibit A, pp. 1-2)
6. On May 9, 2019, the Department received email communication from an employee of the nursing facility indicating that she was working with the front office on obtaining the patient trust fund statements and would provide the information to the Department. (Exhibit A; Exhibit B, p.8)
7. On May 20, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) informing her that for the retroactive period of January 1, 2019, ongoing, she was ineligible for MA because verification of assets was not returned. (Exhibit B, pp. 3-5)
8. There was no evidence that the Notice was sent to Petitioner's POA.
9. On June 21, 2019, Petitioner's POA requested a hearing on Petitioner's behalf, disputing the denial of the Application. (Exhibit A)

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.

Additionally, 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. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, pp. 3-4.

For MA cases, clients are given 10 calendar days (or other time limit specified in policy) to provide the verifications requested by the Department. BAM 130, pp.7-9. If the client cannot provide the verification despite a reasonable effort, the Department is to extend the time limit to submit the verifications up to two times. BAM 130, pp. 7-9. The Department is to explain to the client or AR the availability of assistance in obtaining needed information and may grant an extension when the following exists: the customer/AR makes the request, as extension should not be automatically given; the need for the extension and the reasonable efforts taken to obtain the verifications are documented; and/or every effort by the Department was made to assist the client in obtaining verifications. BAM 130, pp. 7-9. Verifications are considered to be timely if received by the date they are due. BAM 130, pp.7-9. The Department will send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. BAM 130, pp. 8-9.

At the hearing, the Department testified that Petitioner's Application for MA benefits was denied because Petitioner failed to return sufficient verification of the patient trust fund accounts for the months of January 2019 through April 2019 by the due date identified on the VCL. The Department stated that it provided Petitioner and the nursing facility with additional time to submit the requested asset verifications before issuing the Notice of denial on May 20, 2019.

An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts of his/her behalf, assuming all responsibilities of the client. BAM 110 (April 2019), pp.9-11. For Medical Assistance (MA) purposes an authorized representative must be an adult child or stepchild, a specified relative, designated in writing by the client or court appointed. BPG Glossary (April 2019), pp. 7-8. A power of attorney is an instrument authorizing another to act as one's agent or attorney. The agent is attorney in fact and his power is revoked on the death of the principal by operation of law. BPG Glossary, p. 54.

Initially, the Department testified through its hearing summary that it did not have any record of an AR assigned to Petitioner's case and asserted that no POA was included with the Application. However, later in the hearing, the Department conceded that upon review of Petitioner's electronic case file, the Durable Power Of Attorney was filed with the Department on November 27, 2017, November 30, 2018, February 15, 2019, and again on April 29, 2019 in connection with the Application at issue.

Therefore, the evidence showed that although the Department had record of Ms. [REDACTED] being Petitioner's POA/AR, it did not send her the VCL and thus, she was not provided with an adequate opportunity to verify or obtain sufficient verification of the patient trust fund accounts from the nursing facility and to submit them to the Department within the required timeframe. See BAM 110; BAM 130.

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 denied Petitioner's application for MA benefits with a request for retroactive MA benefits from January 2019, ongoing.

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. Register and reprocess Petitioner's April 29, 2019, MA application and Retroactive MA application for January 2019, February 2019 and March 2019 to determine her MA eligibility under the most beneficial program from January 1, 2019, ongoing;
2. Provide Petitioner with MA coverage under the most beneficial category, if eligible, from January 1, 2019, ongoing, in accordance with Department policy; and
3. Notify Petitioner and her AHR in writing of its decision.



ZB/tlf

Zainab A. Baydoun
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-Manistee-Hearings
BSC1 Hearing Decisions
EQAD
D. Smith
MOAHR

Authorized Hearing Rep. – Via USPS:

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner – Via USPS:

[REDACTED]
[REDACTED]
[REDACTED]
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