



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] MI [REDACTED]

Date Mailed: September 24, 2019
MOAHR Docket No.: 19-008389
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 September 23, 2019, from Detroit, Michigan. Petitioner did not participate in the hearing. [REDACTED] of [REDACTED] testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) did not participate in the hearing.

ISSUE

The issue is whether MDHHS properly processed Petitioner's application for Medicare Savings Program (MSP).

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 24, 2019, MDHHS received Petitioner's application requesting MSP. The application stated that Petitioner had an authorized representative (AR).
2. On June 7, 2019, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting proof of income and assets. The VCL was not mailed to Petitioner's AR.
3. On July 8, 2019, MDHHS denied MSP beginning May 2019 due to Petitioner failing to verify income and assets. MDHHS sent notice to Petitioner.

4. On August 2, 2019, Petitioner's AR, who was also Petitioner's AHR, requested a hearing alleging that MDHHS failed to process Petitioner's application.

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).

The MA program includes subprograms for Medicaid and Medicare cost-sharing. BAM 810 (January 2018), p. 1. Medicare cost-sharing (aka MSP) is a program in which Medicaid pays for Medicare Part B premiums or Part A and B premiums, coinsurances and deductibles for certain Medicaid recipients. *Id.*

Petitioner's AHR requested a hearing to dispute an alleged failure by MDHHS to process Petitioner's application dated May 24, 2019, requesting MSP benefits. After requesting a hearing, Petitioner's AHR learned that MDHHS processed and denied Petitioner's application. A Health Care Coverage Determination Notice dated July 8, 2019, stated that MDHHS denied Petitioner's application due to a failure to verify income and assets. Exhibit A, pp. 1-3.

For MA, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 8. MDHHS may send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

MDHHS denied Petitioner's application after a VCL was sent to Petitioner on June 7, 2019, and Petitioner allegedly failed to return proof of income and assets. Exhibit A, pp. 5-6. For purposes of this decision, it will be assumed that Petitioner failed to verify income and assets. Despite Petitioner's failure, MDHHS' mailing of the VCL was flawed.

An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf.¹ BAM 110 (April 2019), p. 9. The AR assumes all the responsibilities of a client. *Id.*, p. 10.

¹ An AR is not the same as an Authorized Hearings Representative (AHR) though, in the present case, Petitioner's AR and AHR are the same agency.

State agencies must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency. 42 CFR 435.923(a)(1). Applicants and beneficiaries may authorize their representatives to perform the following:

- (1) Sign an application on the applicant's behalf;
- (2) Complete and submit a renewal form;
- (3) Receive copies of the applicant or beneficiary's notices and other communications from the agency;
- (4) Act on behalf of the applicant or beneficiary in all other matters with the agency. 42 CFR 435.923(b).

Petitioner's AHR credibly testified that Petitioner's application dated May 24, 2019, listed an AR; MDHHS did not rebut the evidence. MDHHS mailed Petitioner a VCL requesting verification of income and assets on June 7, 2019. Exhibit A, pp. 5-6. Petitioner AHR credibly testified that there was no indication that her agency received the VCL.

Under federal regulations, Petitioner's AR was entitled to receive the VCL as it was a communication to Petitioner. Given the evidence, MDHHS failed to send a copy of a VCL to Petitioner's AR/AHR. By failing to send Petitioner's AR/AHR notice of the verifications needed, MDHHS failed in its procedural requirements thereby rendering the denial based on a failure to verify to be improper. To remedy the error, Petitioner is entitled to reinstatement of her application.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly processed Petitioner's application for MSP. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's application dated May 24, 2019, requesting MSP;
- (2) Register Change Healthcare as Petitioner's authorized representative to ensure that all relevant correspondence is mailed to Petitioner's authorized representative; and
- (3) Initiate processing of Petitioner's application.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki

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

DHHS
(via electronic mail)

Denise McCoggle
MDHHS-Wayne-15-Hearings
BSC4
D Smith
EQAD

Petitioner
(via first class mail)

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

Authorized Hearing Rep.
(via first class mail)

[REDACTED]
[REDACTED]
[REDACTED] FL [REDACTED]