



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: October 4, 2019
MOAHR Docket No.: 19-008839
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 26, 2019, from Detroit, Michigan. The Petitioner was represented by Attorney [REDACTED] and had Paralegal [REDACTED] (Paralegal) appear as a witness. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED] and had [REDACTED], Eligibility Specialist, (E/S) appear as a witness.

ISSUE

Did the Department properly deny Petitioner's Application for Medical Assistance (MA) Program benefits?

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 March 29, 2019, the Department received Petitioner's Application for MA benefits.
2. On April 25, 2019, the Department issued a Verification Checklist (VCL) to Petitioner's Attorney's Law Office requesting proof by May 6, 2019 of Life Insurance and

Verification of the exact IAA Date, full bank statements (all pages) for accounts ending in 6321 and 1937 for the month of the IAA date and March 2019, verifications of Pacific Life for the IAA date, and verifications on General Life, Columbian Life, Transamerica, and Sears Accidental Life as marked on the Bank Statement 6321 for November 2018

3. On May 9, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner's Attorney's Law Office informing them that Petitioner was not eligible for MA benefits because Petitioner's income exceeded the limit for the program effective March 1, 2019 and because Petitioner had failed to provide the requested verifications effective December 1, 2018.
4. On May 10, 2019, at 9:58 AM, Paralegal emailed E/S informing her that she had just received the VCL for Petitioner, that it was already past the due date, and requested an extension of the deadline indicating something must have happened in the mail because they did not receive it on time.
5. On the same day at 10:37 AM, Paralegal again emailed E/S providing proof of the IAA and indicating that the Petitioner's family was working to obtain the remainder of the requested verifications.
6. On August 7, 2019, the Department received Petitioner's request for hearing disputing the Department's denial of her MA Application.

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, the Department denied Petitioner's Medical Assistance (MA) Program Application because the Department had not received the requested verifications by the due date. The Department is required to verify household circumstances at Application, Redetermination, and for reported changes affecting eligibility or benefit level. BAM 130

(April 2017), p. 1. The Department must tell the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Typically to accomplish this objective, the Department issues a VCL or a specific form to be filled out. In MA cases, the Department provides the client with ten calendar days to provide the requested items. BAM 130, p. 8. The deadline can be extended up to two times so long as the client has made a reasonable effort, the Department has attempted to assist, and the client has requested the extension. *Id.* Case action notices are sent when the client indicates a refusal to provide a verification or when the time period given has lapsed. *Id.*

Assets are used in determining eligibility for MA and MSP benefits. BEM 400 (January 2019), pp. 1, 6-8. Therefore, the Department's attempt to verify Petitioner's bank accounts, life insurance, and other assets are in accordance with Department policy.

Petitioner argues that the Department erred in denying the MA Application because the VCL was delivered to Petitioner's Attorney's Law Office after the due date making it impossible to comply with the request on a timely basis and that the Department erred in failing to issue the VCL to Petitioner and her Attorney, instead the Department only mailed it to Petitioner's Attorney. The Department did not dispute that the VCL was issued only to Petitioner's Attorney's Law Offices and agrees that it received an email from Paralegal at Petitioner's Attorney's Law Offices indicating that the VCL had been received after the due date.

Policy provides that clients and their authorized representatives have a duty to cooperate with Department requests in determining initial and ongoing eligibility for all programs. BAM 105 (January 2019), p. 9. Policy also provides that at application, the Department is required to explain to the client and authorized representative the availability of Departmental assistance to obtain needed information including but not limited to a grant of an extension upon request of the client or authorized representative. BAM 130 (April 2017), p. 8. Since the client and the authorized representative are equally tasked with the obligation to cooperate with Department requests in determining eligibility, and the Department is required to inform both individuals of their rights, the Department did not adequately afford Petitioner the opportunity to cooperate because the VCL was not sent to Petitioner. If Petitioner had received the VCL, its possible that the late arrival of the VCL at the Law Office would have been mitigated and Petitioner or her Authorized Representative could have timely complied with the Department's request. In addition, since the Department was aware that the Law Offices received the VCL late and does not dispute the veracity of Paralegal's statements, the Department could have assisted in the matter by providing an extension pursuant to Paralegal's request. Therefore, the Department did not act in accordance with Department policy in denying the Application based upon a failure to verify assets.

The Department also denied the Application based upon an alleged excess income. The Department did not present any evidence regarding the denial of benefits based upon excess income; therefore, it has not met its burden of proof that it acted in

accordance with Department policy when denying Petitioner's MA benefits based upon excess assets.

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 MA Application and failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied the MA Application based upon excess assets.

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 Application and Retroactive Application from March 29, 2019;
2. Determine Petitioner's eligibility for MA benefits;
3. Issue supplements to Petitioner or on her behalf for benefits not previously received; and,
4. Notify Petitioner and her Authorized Representative of its decision in writing.

AM/tm



Amanda M. T. Marler

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

Counsel for Respondent

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

DHHS

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

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

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

CC:

[REDACTED]
[REDACTED]