



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: December 2, 2020
MOAHR Docket No.: 20-006096
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 October 22, 2020.

██████████ with Independent Medical Networks appeared on behalf of ██████████ Petitioner.

Kim Wood, ES Worker, appeared on behalf of the Department, the Michigan Department of Health and Human Services (MDHHS).

Approximately half-way through the hearing, Julie Claffery, Assistant Payments Supervisor with the MDHHS, appeared as a witness for the Department.

Department Exhibit A.56 was offered and admitted into the record.

ISSUE

Did the Department properly process Petitioner's Medical and retro MA assistance applications dated ██████████ 2020, ██████████ 2020, and ██████████ 2020?

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 [REDACTED], 2019, Petitioner applied for MA and retro MA with the MDHHS. On August 9, 2019, Petitioner's MA was open with a \$1,227.00 deductible from July 1, 2019 through July 31, 2019 and a \$1,193.00 deductible from August 1, 2019 through June 30, 2020. Exhibit A.35.
2. On June 11, 2020, Petitioner's representative, Independent Medical Networks, applied for MA and retro MA on behalf of Petitioner with the MDHHS.
3. On June 30, 2020, Petitioner's representative, Independent Medical Networks, applied for MA on behalf of Petitioner with the MDHHS.
4. On August 24, 2020, Petitioner's representative, Independent Medical Networks applied for MA on behalf of Petitioner with the MDHHS.
5. On August 24, 2020, Petitioner's representative requested an administrative hearing, due to the Department failing to process or issue any notice regarding the disposition of Petitioner's multiple MA and retro MA applications.

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.

Here, Petitioner requested a hearing, primarily to dispute the fact that the Department failed to process Petitioner's multiple applications, and open a MA spend down case for March 2020. Petitioner has an 'old bill' \$1,408.00, which Petitioner needs to apply to the March 2020 retro month.

Here, the Department gave inconsistent responses to Petitioner's hearing request, saying on one hand, Petitioner was already eligible and should have known that he was eligible. On the other hand, the Department stated that Petitioner was eligible, and just

wanted the Administrative Law Judge to issue an order for a ticket approving benefits, and that other ALJs have done this.

The Department's position in this case and actions were difficult to discern from the Department's testimony and Exhibit A. What the Department did testify to under oath at the administrative hearing was that as of the time of Petitioner's request for an administrative hearing, the Department had failed to process Petitioner's multiple applications and retro applications on the grounds that the Department was 'behind'. Specifically, the Department's witness testified: "I was behind and did not process Petitioner's applications until 9/24/2020". At the same time, the Department testified that Petitioner's applications were classified as change reports and not applications. The Department failed to offer any September 24, 2020 Notice of Case Actions other than to say that Petitioner was eligible and the ALJ should issue an Order to issue a ticket as Petitioner was already eligible.

Unrefuted evidence is that the Department's data base did not indicate that Petitioner had a MA spend down eligibility in 2019, or in 2020. It is also unrefuted that the [REDACTED] 2019 application did not put Petitioner on notice for all the months in 2020 for which he applied in his multiple 2020 applications.

If Petitioner is not eligible under MDHHS policy and corresponding federal law and regulations, despite the Department's advocacy on the behalf of Petitioner, the undersigned has no authority to issue any order approving benefits, despite the Department's insistence that other ALJs do this 'all the time'. On the other hand, if the Department has failed to properly process Petitioner's applications as required by federal and state law and policy, the undersigned must reverse the Department on the grounds that the evidence of record fails to support the Department's action(s), or as in this case, failure to act.

Under BAM application processing policy, and corresponding federal law, the Department is required to issue a disposition on an application within certain time limits. See BAM 105-115; 42 CFR 431, 435. See also BAM 402 and corresponding policy. Under general verification policy and procedure, the Department is required to communicate with an application, including issuing necessary requests, for any outstanding verifications. See ABM 130; 42 CFR 435.913, .916; MCL 400.37.

After a careful review of the substantial and credible evidence of record, the undersigned finds that the Department has not followed its policy and procedure under the above cited authority, in failing to issue a disposition of Petitioner's multiple applications, and retro MA applications. As such, the evidence of record does not support finding that the Department has correctly processed Petitioner's applications as required by federal and state law and Department policy and must be reversed.

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. Reprocess Petitioner's multiple MA and retro MA applications, and issue notice as required by policy and procedure, if not otherwise done, and
2. Apply Petitioner's MA retro bill of \$1,408.00 from U of M to the March 2020 retro month, if otherwise eligible, unless otherwise done, and
3. Issue of ticket, if required, to have the Department apply the old bill of \$1,408.00 to the March 2020 retro month, if not otherwise done.

IT IS SO ORDERED.

JS/ml



Janice Spodarek
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

Julie Claffey
Clare County MDHHS – via electronic mail

BSC2 – via electronic mail

D. Smith – via electronic mail

L. Karadsheh – via electronic mail

Authorized Hearing Rep.

██████████ – via first class mail
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████████████████████
██████████, MI ██████████

Petitioner

██████████ – via first class mail
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