



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 26, 2018
MAHS Docket No.: 17-015822
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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, an administrative hearing was held on 2/22/18, from Lansing, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Amber Gibson, the Ingham County Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Medicaid (MA) and Medicare Savings Plan (MSP) claiming Petitioner did not cooperate with the yearly redetermination process?

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 has been beneficiary of the MA and MSP programs for almost 10 years, with the Respondent. Petitioner is 74 years old.
2. Petitioner cases were due for a yearly review in September 2017 for the MA program and October 2017 for the MSP program. The Respondent testified it issued one set of redetermination forms for both programs by mail on 9/5/17.
3. Petitioner mailed his completed forms and retained copies, on or about 9/9/17.

4. On 10/19/17, the Respondent mailed a closure notice for the MA program for failure to return the forms. Petitioner requested a hearing. Respondent failed to forward the hearing request to the Michigan Administrative Hearing System (MAHS).
5. On 11/17/17, Respondent mailed a notice of closure for the MSP program for failure to return the forms. Petitioner filed a second hearing request on 11/17/17, which was forwarded to MAHS, stating in part: "Re: Second Request for Appeal..."
6. Unrefuted evidence is that Petitioner delivered a second set of verifications date stamped by the Respondent in December 2017. Respondent's witness testified that Respondent failed to process Petitioner's verifications because it "was too late."
7. On 1/4/18, MAHS issued a Notice of Hearing to Petitioner at an incorrect address, which was due to error by the State of Michigan. Petitioner did not receive the notice mailed to an incorrect address by MAHS. MAHS subsequently issued a Dismissal, which was Vacated by Marya Nelson-Davis on 2/6/18.
8. On 2/8/18, MAHS issued a new Notice of Hearing for 2/22/18.
9. Petitioner's worker did not appear at the administrative hearing for testimony and/or cross-examination.
10. Unrefuted testimony is that Petitioner had a previous case redetermination for which he mailed his paperwork and the Respondent claimed never to have received the verifications. Petitioner requested an administrative hearing. Just before the start of the hearing, the papers were discovered.

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.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

In this case, the Respondent claims that Petitioner failed to return his forms as directed. Petitioner claims that he did return his forms.

Here, Petitioner claims that he mailed his redetermination paperwork from a [REDACTED] mailbox, on or about September 9, 2017. Petitioner's recall of the having mailed them, the place, and surrounding circumstances were specific, lending credibility to his account.

The Respondent on the other hand, claims that the forms were not returned.

Here, the witness who appeared on behalf of Respondent did not have personal knowledge of Petitioner's case. It did not appear that Respondent had Petitioner's file at the administrative hearing. Respondent did not establish that Petitioner had a pattern of failing to timely respond to Department requests for verifications over the many years that Petitioner has been a recipient; Petitioner's worker was not at the administrative hearing and available for examination and/or cross-examination.

On the other hand, unrefuted testimony by Petitioner was that he has, in the past, mailed verifications to the Department which the Department claimed to have never received until they were discovered just prior to an administrative hearing. Petitioner was a credible witness.

The facts here indicate that the Respondent failed to forward both of Petitioner's hearing requests in this matter. In addition, Petitioner has been receiving benefits for almost 10 years, and has not had a pattern of returning verifications untimely. The Department on the other hand, has had a history of misfiling Petitioner's paperwork. In addition, the witness at hearing did not seem to be familiar applicable policy, testifying that the applicable policy is found in BAM 220. Respondent witness testified that the policy is titled "Redetermination." However, BAM 220 is titled "Case Actions." Redetermination policy is found in BAM 210. Furthermore, due to an addressing processing error, Petitioner's 2/22/18 hearing was unduly delayed since his first hearing request, which date was likely in October 2017 (but which the Department failed to forward to MAHS).

Considering all of the facts here in their totality, and weighing credibility factors, this ALJ finds that Petitioner met his burden of proof pursuant to the applicable law and policy. Based on the facts of record, the Department's closures are reversed.

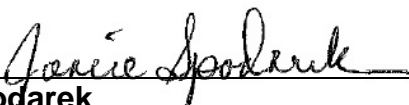
DECISION AND ORDER

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. Process Petitioner's redetermination verification paperwork which the Department has in its possession, and
2. Reinstate Petitioner's MA and MSP cases from the dates of closure, and
3. Issue any supplemental benefits to Petitioner to which he is entitled, if otherwise eligible.

JS/hb



Janice Spodarek
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI 48911

Ingham County, DHHS

BSC2 via electronic mail

M. Best via electronic mail

EQADHShearings via electronic mail

Petitioner

[REDACTED]
MI [REDACTED]