



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 11, 2019
MAHS Docket No.: 18-011175
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way hearing was held on December 13, 2018, from Detroit, Michigan. The Petitioner was represented by Hanice McGruber, of Guardian Associates, the Petitioner's appointed Guardian. The Department of Health and Human Services (Department) was represented by Tamora Zander, Family Independence Manager, and Franklin Cabello, Eligibility Specialist.

ISSUE

Did the Department properly deny the Petitioner's application for Medical Assistance (MA) for Long Term Care (LTC)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner's court-appointed Guardian, Guardian Associates, applied for MA on September 6, 2018. (Exhibit B.) At the time of the application, the Petitioner was a Long-Term Care Resident. The Petitioner's Guardian also filed a Retroactive Medicaid Application for June 2018, July 2018 and August 2018. The Department acknowledges that the Guardian was duly appointed as Guardian for Petitioner. (Exhibit C.)
2. The Petitioner received Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$ [REDACTED] monthly. (Exhibit C.)

3. The Petitioner filed an Assets Declaration Patient and Spouse, DHS-4574B which was received on September 6, 2018. (Exhibit A.)
4. A Verification Checklist (VCL) was sent to the Petitioner at her nursing home address on September 24, 2018. The VCL information requested was due on October 4, 2018. The VCL requested that the Petitioner was to provide “all vehicle registration or title, if sold, amount and proof of how funds disposed of. Provide homestead assessment and expense. Provide bank statement where the Social Security Administration (SSA) and Pension deposited for June, July, August and September 2018, all pages showing all transactions. Please provide complete trusts, if any. Please provide current all life insurance face and cash surrender value. Please provide Guardian fee request for client. Please provide all income and asset. Fax all verifications to (517) 346-9888. Please provide additional information about: Burial Resource unknown, Assets, Real Property, Unknown, Shelter Expense, unknown, Medical Insurance, unknown and Life Insurance Unknown”. (Exhibit D.)
5. The Department did not receive any response to the VCL from the Guardian.
6. The Department issued a Health Care Coverage Determination Notice (HCCDN) on October 16, 2018, denying the application as of June 1, 2018. The reasons for the denial were listed as “verification of Burial Resource (BEM 400), Assets (BEM 400), Real Property (BEM 400), Shelter Expense (BEM 554), Medical Insurance (BEM 257), Life Insurance, (BEM 400) was not returned for Marilyn Nagy. The HCCDN was sent to the Petitioner at Guardian Associates, P.O. Box 48531, Oak Park, MI 48237.
7. The Petitioner’s Guardian requested a timely hearing received on October 31, 2018, protesting the Department’s denial.

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 testified that it sent a VCL to the Petitioner's Guardian by local print, (Manual) requesting verification of a number of items in conjunction with an application dated September 6, 2018, for Medicaid for Long-Term Care and retroactive Application for June, July and August 2018 filed by and on behalf of Petitioner by the Guardian. (Exhibit A.) The Petitioner resides in a Long-Term Care facility and has been appointed a Guardian, and the Letters of Guardianship indicate that the Petitioner is an incapacitated individual.

The Department sent a VCL to the Petitioner at her nursing home address on September 24, 2018. The Department testified that it sent a manually printed VCL to Guardian Associates. The Guardian at the hearing for Guardian Associates, the Petitioner's Guardian, testified that they did not receive any VCL. The VCL sent to the Petitioner was due on October 4, 2018, and no information was received by the Department.

The Department issued a HCCDN on October 16, 2018, denying the application and retro application as of June 1, 2018. The reasons for the denial were listed as "verification of Burial Resource (BEM 400), Assets (BEM 400), Real Property (BEM 400), Shelter Expense (BEM 554), Medical Insurance (BEM 257), Life Insurance, (BEM 400) was not returned for Marilyn Nagy. The HCCDN was sent to the Petitioner at Guardian Associates, P.O. Box 48531, Oak Park, MI 48237.

The VCL sent to the Petitioner requested that the Petitioner was to provide, "all vehicle registration or title if sold, amount and proof of how funds disposed of. Provide homestead assessment and expense. Provide bank statement where SSA and Pension deposited for June, July, August and September 2018, all pages showing all transactions. Please provide complete trusts, if any. Please provide current all life insurance face and cash surrender value. Please provide Guardian fee request for client. Please provide all income and asset. Fax all verification to (517) 346-9888. The verifications were due by October 4, 2018. Please provide additional information about: Burial Resource unknown, Assets, Real Property, Unknown, Shelter Expense, unknown, Medical Insurance, unknown and Life Insurance Unknown". (Exhibit D.)

A Prehearing Conference was scheduled for October 15, 2018; and the Petitioner's Guardian indicated that she called several times to participate in the Prehearing and finally received a call from the Department on October 15, 2018, in the afternoon well after the time for the Prehearing Conference. The notes in the Guardian's Client Log for this matter regarding the phone call by the Guardian indicate that she was told the by the Department representative that the Department was not responsible for giving the Guardian time to get their documents together and that they will give two extensions for a total of 20 days. The notes indicate that the Guardian explained that she called and left messages requesting extensions and never received a return phone call. The Department had not denied the application at the time of the phone conversation with the Department. (Petitioner Exhibit 1.)

The Department provided the following case notes regarding a conversation with the Petitioner's Guardian on October 15, 2018:

I spoke to be Guardian today at 1:15, Guardian explained that she did not have enough time to submit the verification requested. She needed more than nine days. However, the Guardian did not request an extension. She stated that she called and left a message and a telephone number and no one from the department called her back. She was asked to and when she left a message.

At the time of this discussion above, the Department had not issued its HCCDN denying the medical application for lack of verification. In addition, the discussion notes and discussion were not with the caseworker previously assigned to the case and who testified at the hearing.

In addition, the caseworker who sent the VCL testified that he sent the VCL local print to the Guardian. He placed a note in case comments that he sent something (not identified) local print to the Guardian on September 25, 2018. The case note did not identify what was sent. The Department did not produce any evidence that a VCL sent to the Guardian at the hearing, it did not provide a copy of the VCL sent local print, nor did it establish a due date for the VCL that it testified that it sent manually by local print. Under these circumstances, the Department has not met its burden to establish that it properly denied the Medicaid Application for Long-Term Care and Retroactive Application for failure to verify information.

For Medicaid cases the Department must allow the client or AHR, 10 days to provide the verification requested. **If the client cannot provide the verification despite a reasonable effort, extend the time limit up to two times.** BEM 130 (April 2017), p. 8. (Emphasis Supplied).

At application, renewal, ex parte review, or other change, explain to the client/authorized representative the availability of your assistance in obtaining needed information.

Extension may be granted when the following exists:

- **The customer/authorized representative need to make the request. An extension should not automatically be given.**
- **The need for the extension and the reasonable efforts taken to obtain the verifications are documented.**
- **Every effort by the department was made to assist the client in obtaining verifications. BAM 130, p. 8**

Send a case action notice when:

- The client indicates refusal to provide a verification, **or**
- The time period given has elapsed.

The client must obtain required verification, but the local office must assist if they need and request help.

If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. If no evidence is available, use your best judgment. BAM 130, p.3 (Emphasis Supplied)

In addition, certain information must be verified which includes disability and incapacity. BAM 130, p. 4.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied the Petitioner's application for Medicaid Long-Term Care and Retroactive Application for June 2018, July 2018 and August 2018.

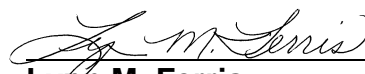
DECISION AND ORDER

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. The Department shall re-register the Petitioner's September 6, 2018, Medicaid Application for Long-Term Care and Retroactive Application.
2. The Department shall re-process the Petitioner's MA Long-Term Care application and retractive application and determine Petitioner's eligibility.

LMF/jaf



Lynn M. Ferris
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) 763-0155; 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

Christine Steen
MDHHS-Wayne-82-Hearings

Authorized Hearing Rep.

Guardian & Associates Inc
P.O. Box 48531
Oak Park MI 48237

Petitioner

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[REDACTED] MI [REDACTED]

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