



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: November 14, 2019
MOAHR Docket No.: 19-008788
Agency No.: [REDACTED]
MOAHR Docket No.: 19-010637
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 31, 2019, from Detroit, Michigan. The Petitioner was represented by [REDACTED] Petitioner's son, [REDACTED] also appeared and provided testimony on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by Kelley McLean, Assistant Attorney General. [REDACTED] Assistance Payments Worker, and [REDACTED] Medical Eligibility Policy Specialist, appeared and testified on behalf of the Department.

On October 15, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request from the Department of Health and Human Services (Department) to consolidate MOAHR docket numbers 19-008788 and 19-010637. Upon agreement of the parties, the cases were consolidated; and this hearing decision resolves both cases.

ISSUE

Did the Department properly deny Petitioner's October 11, 2018, application due to exceeding the asset limit?

Did the Department properly determine that Petitioner was subject to a divestment penalty for the period of March 1, 2019 through May 4, 2019?

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 October 26, 2018, Petitioner applied for MA with a request for retroactive coverage back to July 2018.
2. A Verification Checklist was sent to Petitioner on November 8, 2018, with a due date of November 19, 2018.
3. An extension was requested and granted on November 19, 2018.
4. A second extension was requested and granted on November 29, 2018.
5. A third extension was requested and granted on December 20, 2018.
6. Asset detection was run on January 3, 2019, after verifications were received.
7. On January 7, 2019, the application was denied; and a Health Care Coverage Determination Notice was sent to Petitioner.
8. On January 10, 2019, Petitioner's counsel emailed the Department to let them know that Petitioner was not aware of the [REDACTED] accounts.
9. On January 22, 2019, Petitioner's counsel emailed the Department asserting that the Bank of America accounts did not belong to Petitioner.
10. On January 30, 2019, Petitioner's counsel submitted an affidavit in support of the contention that the [REDACTED] account was not Petitioner's account.
11. On January 31, 2019, Petitioner reapplied for MA benefits.
12. The Department denied Petitioner's application for MA benefits.
13. In March 2019, Petitioner's son transferred the funds from each of the bank accounts which he jointly held with his mother, for a total transfer of \$20,665.00.
14. On March 15, 2019, Petitioner reapplied for MA benefits.
15. On March 29, 2019, Petitioner requested hearing disputing the January 7, 2019 denial of MA benefits.
16. On May 13, 2014, the Department issued a Benefit Notice which notified Petitioner that she was subject to a divestment penalty from March 1, 2019 through May 4, 2019.

17. On May 30, 2019, a Hearing Decision was issued which affirmed the Department's denial of the January 7, 2019 application for benefits.
18. On [REDACTED] Petitioner's counsel filed a Request for Reconsideration of the May 30, 2019 Hearing Decision.
19. On [REDACTED], Petitioner's counsel filed a Request for Hearing disputing the Department's May 13, 2019 Benefit Notice.
20. On August 26, 2019, an Order Granting Petitioner's Request for Reconsideration was issued which instructed the Department to reinstate the application going back to the date of application and to evaluate verification documentation.
21. On August 28, 2019, the Department issued a Benefit Notice which indicated that Petitioner's October 2018 application was reconsidered and denied because the verifications did not prove other ownership.
22. On [REDACTED] Petitioner's counsel filed a Request for Hearing disputing the August 28, 2019 Benefit Notice.

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.

On January 7, 2019, Petitioner's October 2018 application was denied for excess assets after asset detection showed that Petitioner had four bank accounts with Bank of America that were not disclosed that put Petitioner over the asset limit. The amount in the four bank accounts totaled \$20,665.00. The decision was appealed and subsequently affirmed. Petitioner's counsel filed a Request for Reconsideration, which was granted; and the Department was ordered to evaluate verification and activate MA benefits if otherwise eligible. In the Request for Reconsideration, Petitioner's Attorney asserted that Petitioner did not have an ownership interest in the [REDACTED] accounts and provided affidavits in support of that position after the denial was processed. Petitioner's counsel successfully asserted that the [REDACTED]

accounts belonged to Petitioner's son. Petitioner's counsel asserted that Petitioner had not made any deposits or withdrawals in the accounts, that she had a zero percent interest in the accounts, and that their accounts should not be considered an asset for Petitioner. On August 28, 2019, the Department issued a Benefit Notice which notified Petitioner that her application was reconsidered and denied due to a failure to proof ownership.

Further, on March 15, 2019, Petitioner reapplied for MA benefits. By the time Petitioner reapplied for benefits, her son had transferred the \$20,665.00 from their jointly-owned bank account to his individually owned bank account. On May 13, 2019, the Department issued a Benefit Notice relating to the March 15, 2019, application for MA benefits. The May 13, 2019, Benefit Notice stated that a "2.4-month divestment penalty period was applied from March 1st through May 4th, 2019, for a \$20,665.75 transfer."

At the October 31, 2019, hearing, the Department argued that the only verification provided by Petitioner's son to show his sole ownership of the funds was two Affidavits which were deemed insufficient. Petitioner's counsel argued that no where in policy does it state that the Affidavits do not meet the verification standard. BEM 400 states that when there is joint ownership of cash and retirement plans, the entire amount is counted unless the person claims and verifies a different ownership. Then, each owner's share is the amount they own. BEM 400 (October 2018), p. 13. The Department rejected the Affidavits and testified that because Petitioner's son had a vested interest in the outcome, another form of objective verification from a third party was required.

The Department defines the terms verify, document and documentary evidence. Under verify, the definition provided is a document or action taken, that provides evidence establishing the accuracy of statements in the case record. BPG Glossary (July 2018), p. 75. Under document, the definition provided is the entry or recording of evidence establishing the accuracy of the statements in the case record. BPG Glossary, p. 22. Under documentary evidence, the definition provided is written confirmation in the case record of the client's circumstances. The information in the Affidavit is merely Petitioner's son's statements as to who owned the funds held in the joint account and does not establish the accuracy of the statement contained therein.

At the hearing, Petitioner's son testified that he transferred approximately \$20,000.00 from his individually owned bank account into the account jointly held with his mother. Petitioner's son testified that he did not provide verification from the bank he transferred the funds from because he was not asked to do so.

On May 2, 2019, the Department and Petitioner's counsel corresponded by email. It appears that at the time, there was a hearing pending before an Administrative Law Judge relating to two applications for MA benefits. In the email, Ms. Zander, a Department employee stated as follows:

It was explained to me in order for us to assign a different ownership to the resource we need to verify and document who is the actual owner of the money in the account. The onus of that documentation and verification falls on the applicant. The affidavit would not suffice in place of actual bank statements and supporting documents which show which party made the contributions. Only if we determine that the bank accounts are a resource to the mother would we take any steps to determine if there has been a divestment of those resources.

We need from the son bank statements and all supporting documents which would verify who made the deposits/withdrawals. The verifications are due on 05/09/2019. (Exhibit 1, p. 57).

At the October 31, 2019, hearing, Petitioner's son testified that he transferred approximately \$20,000.00 from his individually owned bank account into the account jointly held by with his mother sometime before October 2018. Petitioner's son testified that he did not provide verification from the bank he transferred the funds from because he was not asked to do so.

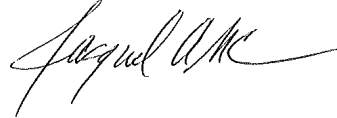
The request for verification in the May 2, 2019, was very specific. The Department requested all supporting documentation as to who made the deposits/withdrawals. The correspondence also provided a due date. Petitioner indicated that he believed he could obtain the information relating to the transfer from his individually owned bank account to the jointly owned bank account with is mother. This would have provided the Department with the best evidence to determine whether the funds were owned solely by Petitioner's son. Thus, it is found that the Department properly determined that Petitioner was subject to a divestment penalty from March 1, 2019 through May 4, 2019.

At the time August 26, 2018, Order Granting Reconsideration was issued, the Department had already specifically requested the needed verification; and they were not received. As such, the Department did not send a second request for the same documents. Because the best evidence to determine the ownership of the funds was not provided by the due date and after several extensions, it is found that the Department properly determined that Petitioner was over the asset limit as it relates to the October 2018 application.

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 acted in accordance with Department policy when it denied Petitioner's October 2018 application because other ownership had not been established. Further, 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 acted in accordance with Department policy when it determined that Petitioner was subject to a divestment penalty from March 1, 2019 through May 4, 2019.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



JAM/jaf

Jacquelyn A. McClinton
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)

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

Counsel for Respondent

(via electronic mail)

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

(via first class mail)

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

Counsel for Petitioner

(via first class mail)

[REDACTED]
[REDACTED]
[REDACTED]