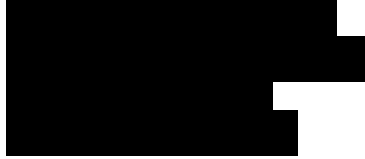




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: July 22, 2019  
MOAHR Docket No.: 19-005810  
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 July 17, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Taryn Miller, Assistance Payments Worker, and Erik Lewis, Assistance Payments Supervisor.

### **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 November 5, 2018, the Department received Petitioner's application for Long-Term Care (LTC) MA benefits and in addition to Authorization to Disclose Protected Health Information to The Lodge at Taylor (Jenna Kedzierski/Barbra Claybaugh).
2. On [REDACTED], 2019, the Department received a second application for LTC MA benefits for Petitioner.
3. On April 4, 2019, the Department indicates that a Verification Checklist (VCL) was mailed to Petitioner at his address of record with a due date of April 15, 2019.

4. On April 12, 2019, the Department alleges that a second VCL was issued in-person to Petitioner's father with a due date of April 22, 2019.
5. Petitioner alleges that he did not receive either VCL.
6. On April 22, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing him that his application had been denied effective November 1, 2018 for failure to return documentation to complete a disability determination.
7. On May 31, 2019, the Department received a Request for Hearing disputing the Department's denial of his 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, Petitioner disputes the denial of his MA application for failure to verify requested items. In MA cases, the Department is required to allow a client ten calendar days to provide a requested verification. BAM 130 (April 2017), p. 8. If the client cannot provide the verification despite a reasonable effort, the time limit should be extended up to two times. *Id.* Verifications are considered to be timely if received by the date they are due. *Id.* Case action notices are sent when a client indicates a refusal to provide a verification or the time period given has lapsed. *Id.* All of the above rules and policies suppose that the Department mailed a VCL to the client and that the Department sought verification of relevant items. The proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 173 NW2d 225 688 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 241 NW2d 71 (1976); *Long-Bell Lumber Co v Nynam*, 108 NW 1019 (1906).

In this case, the evidence is weighted the same. The Department says that the VCL was mailed and hand delivered, but provided no actual VCL to show that it was properly addressed, that it was requesting relevant items to determine case eligibility, or any

other item to show that it was hand delivered. The only evidence is testimony. Likewise, Petitioner testified that the VCLs were not received by mail and he did not receive them from his father. Finally, no evidence was presented from either party that Petitioner's father had been designated as an Authorized Representative which could accept, receive, or otherwise act on the Petitioner's behalf. Therefore, the Department has not met its burden of proof in establishing that the denial of his MA application was in accordance with Department policy.

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 Petitioner's MA application.

### **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 [REDACTED] 2018 Application for LTC MA benefits;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/tm



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**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

**DHHS**

Christine Steen  
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Suite 4-250  
Detroit, MI  
48202

**Petitioner**



cc: FAP: M. Holden; D. Sweeney  
AP Specialist-Wayne County