



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: August 6, 2019  
MOAHR Docket No.: 19-006100  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 in-person hearing was held on August 1, 2019 from [REDACTED] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Cathy Burr, supervisor. Staci Brekke, specialist, testified on behalf of MDHHS.

### **ISSUES**

1. The first issue is whether Petitioner timely disputed the denial of his application dated December 13, 2018, requesting Medicare Savings Program (MSP) benefits.
2. The second issue is whether MDHHS properly denied Petitioner's application dated February 6, 2019, requesting MSP.
3. The third issue is whether MDHHS properly denied Petitioner's application dated April 8, 2019, requesting MSP.

### **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 December 13, 2018, Petitioner applied for MSP. Petitioner reported a post office (PO) box as a mailing address.

2. On January 15, 2019, MDHHS denied Petitioner's application dated December 13, 2018, and mailed notice to Petitioner's PO box. Exhibit B, pp. 2-3.
3. On February 6, 2019, Petitioner applied for MSP.
4. On an unspecified date, MDHHS mailed Petitioner a Health Care Coverage Supplemental Questionnaire (HCCSQ) to Petitioner's residential address.
5. On February 19, 2019, MDHHS and Petitioner discussed Petitioner's case. Petitioner informed MDHHS that he wanted MDHHS to use his PO box as his mailing address and to mail all requested documents to his PO box.
6. As of March 4, 2019, MDHHS did not mail a HCCSQ to Petitioner's PO box.
7. On March 4, 2019, MDHHS denied Petitioner's application dated February 6, 2019, and mailed notice to Petitioner's residential address. Exhibit B, pp. 4-6.
8. On April 8, 2019, Petitioner applied for MA and FAP benefits. Petitioner's application reported unpaid medical expenses for the previous three months.
9. On April 19, 2019, Petitioner submitted a Retroactive Medicaid Application. Exhibit A, pp. 41-43.
10. On May 17, 2019, MDHHS mailed Petitioner written notice of MSP approval beginning April 2019. Exhibit A, pp. 4-8.
11. On an unspecified date, MDHHS approved Petitioner for \$15/month in FAP benefits beginning April 2019.
12. On an unspecified date, MDHHS denied Petitioner's request for retroactive MSP benefits.
13. On June 7, 2019, Petitioner requested a hearing to dispute MSP eligibility from January 2019 to March 2019 and FAP eligibility.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's hearing request checked that FAP eligibility was disputed. During the hearing, Petitioner testified that MDHHS issued to him \$15 in FAP benefits for all recent months. Petitioner further testified that he was satisfied with the FAP issuance and that he did not need a hearing to address FAP benefits. Based on Petitioner's hearing request withdrawal, Petitioner's hearing request concerning FAP benefits will be dismissed.

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's hearing request form checked a dispute over Medical Assistance (MA). Petitioner testified that his only dispute concerning MA was not receiving MSP benefits from January 2019 through March 2019. Petitioner submitted three different applications to MDHHS which may have impacted MSP eligibility from January 2019 to March 2019.

Persons may receive both Medicaid and MSP benefits. BEM 105 (April 2017), p. 2. MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. BEM 165 (January 2018), p. 2. Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. *Id.* The client's income determines for which of the three programs he or she is eligible.

### **Application dated December 13, 2018**

Petitioner applied for MSP on December 13, 2018. MDHHS mailed notice denying Petitioner's application dated December 13, 2018, on January 15, 2019. Petitioner did not dispute that MDHHS mailed the denial notice to his correct mailing address. Petitioner did not request a hearing disputing the application denial until June 7, 2019.

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (August 2018), p. 6. Hearing requests must be submitted to MDHHS in writing though hearing requests concerning FAP benefits may be made orally. *Id.*, p. 2.

Petitioner submitted a hearing request to MDHHS 143 days after MDHHS mailed proper written notice. As Petitioner waited more than 90 days to request a hearing, his hearing request dated is appropriately dismissed concerning the dispute of his application dated December 13, 2018.

### **Application dated February 6, 2019**

Petitioner reapplied for MSP on February 6, 2019. MDHHS mailed notice denying Petitioner's application on March 4, 2019. Petitioner's hearing request dated June 7, 2019 was submitted more than 90 days after MDHHS mailed written notice of denial, however, Petitioner's dispute is not barred because of a flaw in the notice mailing.

MDHHS mailed the notice denying Petitioner's application to Petitioner's residential address. Petitioner credibly testified that he reported to MDHHS that he wanted his PO box used as his mailing address because sometimes his mail is stolen. Petitioner's testimony was corroborated by a MDHHS specialist testifying that she spoke with Petitioner on February 19, 2019 and that Petitioner specifically stated he wanted his PO box used as a mailing address. Presumably, MDHHS did not follow through on Petitioner's reporting because the notice dated March 4, 2019, was sent to Petitioner's residential address.

Given the evidence, the written notice mailed to Petitioner on March 4, 2019, was improperly mailed. Petitioner cannot be barred from requesting a hearing due to untimeliness when the corresponding written notice mailing was improper. Thus, there is administrative hearing jurisdiction to determine whether MDHHS properly denied Petitioner's application on March 4, 2019.

The Health Care Coverage Determination Notice dated March 4, 2019, stated that Petitioner's MSP application was denied due to Petitioner's alleged failure to timely submit a Health Care Supplemental Questionnaire. As of March 4, 2019, MDHHS had not mailed a HCCSQ to Petitioner's reported mailing address. MDHHS had mailed a HCCSQ to Petitioner's residential address. Petitioner credibly testified that while discussing his case with his specialist on February 19, 2019, he expected MDHHS to mail any previously requested forms to his properly reported mailing address. The evidence established that MDHHS failed to update Petitioner's mailing address; thus, it can be presumed that MDHHS also failed to mail the HCCSQ to Petitioner's proper mailing address.

For all programs, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS uses the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* For MA, MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. *Id.*, p. 7. The client must obtain required verification, but the local office must assist if they need and request help. *Id.*, p. 3. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to two times. *Id.*, p. 8. For MA benefits, MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

An implied requirement of requesting verifications is that MDHHS mail the request to the client's proper mailing address. As MDHHS did not, the denial of Petitioner's MSP application for failing to return a HCCSQ was also improper.

### **Application dated April 8, 2019**

Lastly, Petitioner disputed the denial of his application dated April 8, 2019; specifically, Petitioner disputed the denial of his request for retroactive MSP benefits as reported in the application.<sup>1</sup> MDHHS testimony indicated that retroactive MSP benefits were not issued to Petitioner from January 2019 to March 2019 due to Petitioner's alleged failure to verify assets; MDHHS testimony expressed uncertainty whether Petitioner's application was denied or pending while MDHHS waited for Petitioner to submit verification of assets.

Assets must be considered in determining eligibility for SSI-related MA categories such as MSP. BEM 400 (January 2018), p. 1. The asset limit for Supplemental Security Income (SSI)-Related MA is \$2,000. *Id.*, p. 8.

MDHHS testimony acknowledged that Petitioner submitted all required proof of assets. Thus, any denial or delay in processing Petitioner's application would be improper.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew his dispute concerning FAP benefits. It is further found that Petitioner failed to timely request a hearing to dispute the denial of an application dated December 13, 2018 requesting MSP benefits. Concerning FAP benefits and the denial of an application dated December 13, 2018, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's applications dated February 6, 2019, and April 8, 2019. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's application dated February 6, 2019, concerning MSP benefits from January 2019 to March 2019;
- (2) Process Petitioner's application dated 2/6/19, subject to the finding that MDHHS failed to mail a request for verifications to Petitioner's properly reported mailing address; and

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<sup>1</sup> There was no dispute about Petitioner's timeliness in requesting a hearing to dispute the denial of his application dated April 8, 2019.

- (3) Reregister and reprocess Petitioner's application dated April 8, 2019, including Petitioner's request for retroactive benefits, concerning MSP benefits if Petitioner's earlier application is denied for procedural reasons.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



**Christian Gardocki**

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

Via First Class Mail  
**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Via Electronic Mail  
**DHHS**

Sarina Baber  
MDHHS-Washtenaw-Hearings

BSC4  
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