



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

Date Mailed: September 20, 2019
MOAHR Docket No.: 19-007135
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

**ORDER OF DISMISSAL
FOR LACK OF JURISDICTION**

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. The hearing was adjourned on August 22, 2019. After due notice, an in-person hearing was held on September 11, 2019, from Kalamazoo, Michigan. Petitioner was represented by her daughter and Authorized Hearing Representative (AHR) [REDACTED]. The Department was represented by Rebecca Gillian, Sarah Thomas, Angela John Baptiste, and Amanda Fields.

ISSUE

Did the Department of Health and Human Services (Department) properly deny the request from the Authorized Hearing Representative (AHR) for fees associated with complying with the Department's request for information?

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 Department received Petitioner's application for Medical Assistance (MA) on [REDACTED] [REDACTED] 2018. Exhibit A, pp 3-8.
2. On March 20, 2018, the Department notified Petitioner that she was eligible for full coverage Medical Assistance (MA) effective January 1, 2018. Exhibit A, pp 41-43.
3. On December 7, 2018, the Department received Petitioner's Redetermination (DHS-1010) form. Exhibit A, pp 15-22.

4. On January 3, 2019, the Department notified Petitioner that she was eligible for ongoing full coverage Medical Assistance (MA) benefits. Exhibit A, pp 24-26.
5. On February 20, 2018, the Department notified Petitioner that she was eligible for Medical Assistance (MA) with a \$1,313 monthly deductible. Exhibit A, pp 27-32.
6. On February 21, 2019, the Department notified Petitioner that she was not eligible for Medical Assistance (MA) effective April 1, 2019. Exhibit A, pp 36-40.
7. On July 11, 2019, the Department received Petitioner's request for a hearing.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2019), p 5.

The Department is required to certify approval or denial of an application for assistance within 45 days except that the Department will certify approval or denial of an application for MA benefits within 90 days for categories of MA in which disability is an eligibility factor. That standard can be extended 60 days where a determination has been deferred by the Medical Review Team (MRT). Department of Health and Human Services Bridges Administrative Manual (BAM) 115 (April 1, 2019), pp 16-17.

The Department is required to inform people who inquire about available programs and their right to apply for those programs. The Department is not expected to determine the effect on eligibility of proposed financial arrangements. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2019), p 14.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (July 1, 2019), pp 1-10.

Clients must cooperate with the local office in determining initial and ongoing eligibility and this includes the completion of necessary forms. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), p 8.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. The Department uses documents, collateral contacts, or home calls to verify information. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. When documentation is not available, or clarification is needed, collateral contact may be necessary. Department of Human Services Bridges Assistance Manual (BAM) 130 (April 1, 2017), pp 1-10.

Verification of the value of real property can be verified by deed, mortgage, purchase agreement or contract, State Equalized Value (SEV) on current property tax records multiplied by two, attorney or court records, county records, or a statement of real estate agent or financial institution. BEM 400, p 65.

In this case, Petitioner applied for MA benefits on [REDACTED] [REDACTED] 2018, with the assistance of her daughter. After receiving Petitioner's application for assistance, the Department discovered that Petitioner had recently sold real property. Since Petitioner was receiving long-term care, the Department was required to make a determination of whether Petitioner had received the fair market value for her real property because a transfer for less would fit the Department's definition of a divestment.

Initially, Petitioner and her daughter were unable to provide the Department with sufficient verification of the sale price for the real property. The Department compared bank statements with the State Equalized Value (SEV) amount on record with the county tax assessor's office and determined that there was reason to believe that either Petitioner had transferred property for less than the fair market value, or that all of the proceeds from the sale had not been verified. The SEV is an acceptable method of verifying the value of real property per Department policy in BEM 400.

Petitioner's daughter then consulted with an attorney, who was able to provide the Department with sufficient verification of the sale of real property.

Petitioner's representative now argues that the Department had no reason to dispute the information she reported on the application for assistance, and that she should be reimbursed for the legal expenses incurred to provide the Department with the verification documents it was demanding.

The Department received Petitioner's application for MA benefits on [REDACTED] 2018. On March 20, 2018, the Department notified Petitioner that she was eligible for MA benefits with eligibility for benefits extending to the first day of the application month. It was not disputed that Petitioner was a Medicare recipient and the Department certified the approval of her application within its standard of promptness outlined in BAM 115. Therefore, the hearing record supports a finding that there was no unreasonable delay in the processing of the application, or that there would have been a delay if Petitioner had not consulted an attorney.

The Department has a duty to inform clients of the assistance programs that are available and their right to apply for those programs. The Department is not expected to provide legal advice in order to become eligible for benefits. Therefore, the Department is not liable for the legal expenses involved in applying for MA benefits.


Petitioner is entitled to a hearing protesting the denial of an application, a delay of any action beyond the standard of promptness, or unjustified restrictions under which benefits are provided. Petitioner has not established that the Department denied the application for assistance, that the Department caused a lengthy delay in the application processing, or that the Department placed unjustified restrictions on Petitioner before benefits could be provided.

The Department is required to verify the circumstances of its clients before it can provide public assistance and that is what happened in this case. When the Department was able to obtain sufficient verification that Petitioner met the eligibility criteria for MA benefits, her application was approved in a timely manner. Therefore, Petitioner has failed to establish an entitlement to a hearing protesting the Department's refusal to reimburse her for legal expenses.

Petitioner's hearing request is therefore **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.

KS/hb



Kevin Scully
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

Renee Olian
322 Stockbridge
Kalamazoo, MI 49001

Kalamazoo County, DHHS

BSC3 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Petitioner

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

Authorized Hearing Rep.

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