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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Date Mailed: March 11, 2020
MOAHR Docket No.: 19-012709
Agency No.: ▮▮▮▮▮▮
Petitioner: ▮▮▮▮▮▮

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, a telephone hearing was held on February 20, 2020, from Detroit, Michigan. As of the date of hearing, Petitioner was deceased. ▮▮▮▮▮▮▮, Petitioner's son and estate executor, testified and participated as Petitioner's authorized hearing representative (AHR). ▮▮▮▮▮▮ ▮▮▮▮, AHR's wife, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Rebecca Ferrill, supervisor.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application for Medicaid.

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 ▮▮▮▮▮▮▮▮ 2019, MDHHS received an application for Medicaid on behalf of Petitioner. It was reported to MDHHS that Petitioner previously had a trust.

2. As of September 12, 2019, Petitioner was only eligible for a SSI-Related Medicaid category.

3. On September 17, 2019, MDHHS mailed Petitioner's AHR a Verification Checklist (VCL) requesting verifications of Petitioner's checking account, pension, burial funds and/or contracts, "TRUST BURIAL CONTRACT", and "Trust unknown".

4. On October 17, 2019, MDHHS denied Petitioner's application due to not receiving a copy of Petitioner's trust.

5. As of October 17, 2019, Petitioner's AHR had not submitted the trust documents to MDHHS.

6. On November 18, 2019, Petitioner's AHR requested a hearing to dispute the denial of Petitioner's Medicaid eligibility.

7. On November 18, 2019, MDHHS received a copy of Petitioner's trust. Exhibit A, pp. 9-10.

CONCLUSIONS OF LAW

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 AHR requested a hearing to dispute a denial of Petitioner's application for Medicaid dated ▮▮▮▮▮▮▮▮ 2019. A Health Care Coverage Determination Notice dated October 17, 2019 stated that Petitioner's application was denied due to alleged failures to verify burial funds, bank accounts, a trust, and unearned income. MDHHS' testimony acknowledged that the only verification not timely returned was a copy of Petitioner's trust.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MIChild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Specific evidence was not taken on Petitioner's age or circumstances at the time of her application. The evidence suggested that Petitioner was elderly, disabled, and/or a resident of a long-term-care facility. Also, Petitioner passed away shortly after the application for Medicaid was filed. Given the evidence, Petitioner was only eligible for Medicaid under a SSI-Related category.

Unlike MAGI-related categories, assets must be considered in determining eligibility for SSI-related MA categories. BEM 400 (July 2019) p. 1. For SSI-Related MA, all types of

assets are considered. *Id.*, p. 3. All trusts and annuities must be evaluated by the Trust and Annuities Unit. BEM 400 p. 29. Verification of trusts include a copy of trust documents. *Id.*, p. 62. Assets must be verified at application. *Id.*, p. 58.

Petitioner's AHR testified that Petitioner had a trust, but he easily forgets about it because the trust was dissolved. Petitioner's AHR's testimony could raise an issue of whether MDHHS had authority to request verification of a dissolved trust. For purposes of this decision, it will be accepted that MDHHS was authorized to request verification of Petitioner's trust.

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 is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* For Medicaid, MDHHS is to allow the client 10 calendar days to provide the verification that is requested. *Id.*, p. 8. MDHHS may send a negative action notice when:
- The client indicates refusal to provide a verification, or
- The time period given has elapsed. *Id.*

MDHHS mailed Petitioner's a VCL on September 17, 2019, requesting numerous verifications, including a copy Petitioner's trust. Exhibit A, pp. 3-4. The stated due date to return verifications was September 27, 2019. MDHHS waited until October 17, 2019, before denying Petitioner's application due to not receiving a copy of Petitioner's trust. It was not disputed that Petitioner's AHR failed to submit the trust documents to MDHHS by October 17, 2019. The only dispute concerned whether the VCL properly requested trust documents.

The list of items requested on a VCL are typically listed with a corresponding list of acceptable proofs which would comply with the verification request. Notably, a copy of Petitioner's trust was not among the three items listed in this format. Instead, MDHHS included a very long "comment", all in capital letters, to serve as its request for a copy of Petitioner's trust documents:

> SEND PROOF OF RECORDS OF ANY ASSETS SOLD OR TRANSFERRED IN THE LAST 60 MONTHS INCLUDING COPIES OF THE LAST 24 MONTH DETAILED BANK STATEMENT FOR ALL THE ACCOUNTS AT FIFTH THIRD BANK – SEND PROOF (COPIES OF RECEIPTS OR INVOICES) FOR ALL THE EXPENSES OVER $500. ALSO NEEDED IS PROOF OF THERESA'S PENSION, COPY OF HER TRUST BURIAL CONTRACT AND PROOF OF THE PROCEEDS FOR THE HOME SALE IN 2018 AND WHERE THE MONEY AS DEPOSITED AND HOW IT WAS USED. Exhibit A, p. 3.

MDHHS' request for a trust document was buried among numerous other verification requests. Petitioner's AHR testified he overlooked the request for trust documents. Given the format of the trust document request, it is appreciated how someone could overlook the request.

Furthermore, applying basic rules of grammar, MDHHS did not technically request trust documents. The VCL requested a copy of Petitioner's "trust burial contract". Presumably, MDHHS intended to request a copy of Petitioner's trust and any burial contracts. By not separating the intended requests, a reasonable person would not easily understand the specific documents requested by MDHHS.

At the end of the VCL, MDHHS included a second request for trust documents which stated, "Please provide additional information about: Trust Unknown". Reading the statement as it was written implies a request for an unknown trust (i.e. one previously not reported). Presumably, MDHHS intended the statement as a request for documents concerning the reported trust. MDHHS' request was clunky and again not easily interpreted as a request for trust documents.

Given the evidence, MDHHS failed to properly request proof of Petitioner's trust. The failure entitles Petitioner to reregistration and reprocessing of her Medicaid application, subject to the finding that MDHHS improperly requested proof of Petitioner's trust documents. To comply with the remedy, MDHHS would ordinarily need to re-request trust documents from Petitioner. MDHHS should be aware that such a re-request may be unnecessary as the evidence suggested that Petitioner submitted trust documents to MDHHS on November 18, 2019. Exhibit A, pp. 9-10.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for Medicaid eligibility. MDHHS is ordered to commence the following actions within 10 days of the date of mailing of this decision:

(1) Reinstate Petitioner's request for Medicaid dated ███████████ 2019; and

(2) Process Petitioner's application subject to the finding that MDHHS did not make a proper request for verification of Petitioner's trust.

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

CG/cg

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 Email: MDHHS-Grand Traverse-Hearings
D. Smith
EQAD
BSC1- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail: