



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]
[REDACTED]

Date Mailed: June 10, 2020
MOAHR Docket No.: 20-001220
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, a 3-way telephone hearing was held on May 11, 2020, from Trenton, Michigan. At the time of hearing, Petitioner was deceased. [REDACTED] Petitioner's estate representative, participated as Petitioner's authorized hearing representative (AHR).¹ [REDACTED] Petitioner's application representative, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Josette Jubb, specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application for Medicaid, including a request for retroactive 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. As of May 2019, Petitioner was a resident in a long-term care (LTC) facility.
2. On August 26, 2019, MDHHS received Petitioner's applications requesting Medicaid and retroactive Medicaid from May 2019 through July 2019. A savings account (hereinafter, "ccount1") and checking account (hereinafter, "Account2") at [REDACTED] were reported.

¹ See Exhibit A, p. 7 for Letters of Authority.

3. On September 5, 2019, MDHHS mailed a Verification Checklist (VCL) requesting, among other items, ““Complete itemized May June July & August 2019 ALL Bank Statements” and “records for all assets that you have”. A due date of September 15, 2019, was stated.
4. On October 7, 2019, Petitioner submitted to MDHHS several documents which included bank statement for Account1 and Account2 from June 20, 2019 to August 21, 2019. Additionally, submitted were bank statements from a checking account ending in [REDACTED] (hereinafter, “Account3”) from June 25, 2019 to August 27, 2019.
5. On October 11, 2019, MDHHS denied Medicaid to Petitioner from May 2019 due to a failure to verify information.
6. On [REDACTED] 2020, Petitioner’s representative requested a hearing to dispute the denial of Medicaid since June 2019.

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. MDHHS 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 denials of Medicaid applications. Exhibit A, pp. 5-6. The denial stems from Petitioner’s Assets Declaration (Exhibit A pp. 12-21) and Retroactive Medicaid Application (Exhibit A, pp. 22-24), which were both dated [REDACTED] 2019; Medicaid from May 2019 was requested. A Health Care Coverage Determination Notice dated October 11, 2019, stated that MDHHS denied Medicaid to Petitioner from May 2019 due to a failure to verify information. Exhibit A, pp. 32-38.

During the hearing, Petitioner’s AHR stated that the denial of May 2019 was not disputed. The analysis will proceed to address Petitioner’s Medicaid eligibility since June 2019.

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 his 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 an 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, including cash in bank accounts, are considered. *Id.*, p. 3. Assets must be verified at application. *Id.*, p. 58.

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 application representative a VCL on September 5, 2019, requesting numerous verifications. Exhibit A, pp. 25-27. Most relevant to this case was a request for "Complete itemized May June July & August 2019 ALL Bank Statements" and "records for all assets that you have". Petitioner's representative responded by returning the following:

<u>Account</u>	<u>Type</u>	<u>Statement dates</u>
Account1	savings	June 20, 2019 to August 21, 2019
Account2	checking	June 20, 2019 to August 21, 2019
Account3	checking	June 25, 2019 to August 27, 2019
████	checking	none
████	money mkt.	none

The VCL sent to Petitioner's representative listed a due date of September 15, 2019, to return verifications. It was not disputed that Petitioner's representative had not returned verifications for two accounts. It was also not disputed that Petitioner's representative did not return statements covering all of June 2019 or August 2019. MDHHS considered the failures as justification to deny Medicaid to Petitioner.

Concerning Account1, Account2, and Account3, Petitioner's AHR contended that the verifications were sufficient. For SSI-related Medicaid, asset eligibility exists when countable assets do not exceed the asset limit for at least one day during a month. *Id.*, p. 7. Petitioner's AHR contended that MDHHS could have determined Petitioner's asset eligibility for June 2019 and/or August 2019 from the partial month statements it did

receive. There are two problems with reversing the denial based on Petitioner's AHR's contention. First, a policy allowing asset-eligibility based on one day is applicable to how MDHHS processes verifications; it was not intended to excuse request for verifications. Secondly, the contention does not address the total absence of other account information.

Concerning the absence of statements covering the end of August 2019, Petitioner's AHR contended that an expectation of timely returning verifications was unreasonable. For the accounts that MDHHS only received statements for part of August 2019, the statements that were submitted covered approximately 30 days. Presuming the same approximate statement coverage, MDHHS expected two bank statements through approximately September 20, 2019 and another through September 27, 2019. The VCL due date was September 15, 2019. Thus, the VCL due date was before a bank statement even existed. Petitioner's representative cannot be faulted for failing to meet this deadline.

Concerning the two accounts for which statements were not submitted (account numbers ending in [REDACTED] and [REDACTED]), MDHHS debatably issued a proper verification request. The relevant VCL requested proof of "all" bank statements and assets. Notably, Petitioner's representative did not list these accounts on the Assets Declaration. Presumably, MDHHS learned of the accounts through its asset detection process (see *Id.*, p. 1) whereby an applicant's assets can be discovered through data matching. It is not clear that Petitioner's representative was aware of that such accounts existed because the VCL did not reference specific accounts. To ensure clarity of the VCL request, MDHHS should have request verification of specific accounts rather than a general request for "all" bank statement and assets.

Also problematic for MDHHS is that Petitioner's representative's submission included a cover letter with the statement, "Please let me know what else you need from me." Petitioner's representative's testimony implied that MDHHS never let him know that verifications were needed beyond his submission. The specialist from the time of submission did not participate in the hearing. There was no evidence that MDHHS ever let Petitioner's representative know that verifications were still needed. There is no known policy requiring MDHHS to respond to such requests, however, it is basic practice for MDHHS specialists to do so.

MDHHS also contended that it did not receive proper verification for Petitioner's health care premiums and possible income listed on Petitioner's bank statements as insurance reimbursements. Concerning the allegedly unverified premiums, MDHHS testimony eventually acknowledged that Medicaid cannot be denied due to a failure to verify insurance premium amounts. Concerning the possible income, MDHHS could not state with certainty that the reimbursements were income; instead, MDHHS stated that there were questions about the potential income which needed answers. MDHSH gave no evidence that questions about the reimbursements were ever asked of Petitioner's representative. Under the circumstances, a denial of Medicaid cannot be supported for a failure to verify insurance reimbursements or premium cost.

Given the evidence, MDHHS did not properly inform Petitioner's representative of the verifications needed. Further, MDHHS failed to follow-up on Petitioner's representative's request to let him know of what verifications were needed. Petitioner's remedy is for a reprocessing of applications following a request for specific account information needed.


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 requests for Medicaid from June 2019. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Register Petitioner's request for Medicaid from [REDACTED] 2019; and
- (2) Re-request specific verification of unsubmitted and required bank statements, premiums, and/or income; and

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-Special Processing Office
D. Smith
EQAD
MOAHR

**Petitioner –
Via First-Class Mail:**

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

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]