



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], NY [REDACTED]

Date Mailed: April 6, 2021
MOAHR Docket No.: 20-008819
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 March 11, 2021, from Lansing, Michigan. Petitioner was represented by her attorney and authorized representative from Cherry Hill Nursing Home, Saye Coutin, P#31200 from Pennsylvania. The Department of Health and Human Services (Department) was represented by Kelly McLean, Assistant Attorney General, P#56542 and Lindsey Laven, Assistant Attorney General, P#75944.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA) long term care (LTC)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner entered the long-term care facility on May 11, 2020.
2. On [REDACTED], 2020, Petitioner applied for MA-LTC with retro MA to May 2020. Department Exhibit 4.
3. On September 2, 2020, the Department Caseworker sent Petitioner through the Cherry Hill Nursing Home a Verification Checklist, DHS-3503, for written verification of pension and bank accounts that was due on September 14, 2020. Department Exhibit 5.

4. On September 11, 2020, the Department received written correspondence requesting that all correspondences and notices be sent to Cowart Dizzia, LLP, 45 Rockefeller Plaza, Ste. 2000, New York, NY 10011. Department Exhibit 6.
5. On September 14, 2020, Petitioner's authorized representative at Cowart Dizzia, LLP requested an extension to September 24, 2020. Department Exhibit 7.
6. On September 15, 2020, the Department Caseworker updated the address and provided the extension, but a new verification checklist was not mailed out. Department Exhibit 8.
7. On September 29, 2020, the Department Caseworker sent Petitioner a Health Care Determination Notice, DHS-1606, that she was not eligible for the MA-L due to failure to provide required asset and income verification by the due date. Department Exhibit 9.
8. On October 13, 2020, the Department Caseworker received the required verification. Department Exhibit 10.
9. On December 21, 2020, the Department received a hearing request from Petitioner, contesting the Department's negative action. Department Exhibit 2.

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 entered the long-term care facility on May 11, 2020. An application for MA-LTC for Petitioner was submitted to the Department on [REDACTED] 2020 with retro MA to May 2020. Department Exhibit 4. On September 2, 2020, the Department Caseworker sent Petitioner through the [REDACTED] a Verification Checklist, DHS-3503, for written verification of pension and bank accounts that was due on September 14, 2020. Department Exhibit 5.

On September 11, 2020, the Department received written correspondence requesting that all correspondences and notices be sent to Cowart Dizzia, LLP, 45 Rockefeller

Plaza, Ste. 2000, New York, NY 10011. Department Exhibit 6. On September 14, 2020, Petitioner's authorized representative at Cowart Dizzia, LLP requested an extension to September 24, 2020. Department Exhibit 7. On September 15, 2020, the Department Caseworker updated the address and provided the extension, but a new verification checklist was not mailed out. Department Exhibit 8.

On September 29, 2020, the Department Caseworker sent Petitioner a Health Care Determination Notice, DHS-1606, that she was not eligible for the MA-L due to failure to provide required asset and income verification by the due date. Department Exhibit 9. On October 13, 2020, the Department Caseworker received the required verification. Department Exhibit 10. On December 21, 2020, the Department received a hearing request from Petitioner, contesting the Department's negative action. Department Exhibit 2. BAM 115 and 130.

During the hearing, the Petitioner's Attorney stated that there was no communication with the Department about whether or not their extension had been granted. As a result, they did not have the opportunity to request a 2nd extension. The Assistant Attorney General countered that their first extension had been approved and the Department was not required by Department policy to communicate that the extension was granted. In addition, Department policy only allows two 10-day extensions per application. Petitioner's application was not denied until September 29, 2020, which was 5 days after the September 24, 2020 verification deadline.

**Denials,
BAM 115,
pg. 25**

All Programs

If the group is ineligible **or** refuses to cooperate in the application process, certify the denial within the standard of promptness to avoid receiving an overdue task in Bridges.

Bridges sends a DHS-1605, Client Notice, or the DHS-1150, Application Eligibility Notice, with the denial reason(s). Medicaid denials receive a DHS-1606, Health Care Coverage Determination Notice.

**Denials,
BAM 130,
pg. 8**

All Programs

If the group is ineligible **or** refuses to cooperate in the application process, certify the denial within the standard of promptness to avoid receiving an overdue task in Bridges.

Bridges sends a DHS-1605, Client Notice, or the DHS-1150, Application Eligibility Notice, with the denial reason(s). Medicaid denials receive a DHS-1606, Health Care Coverage Determination Notice.

The Administrative Law Judge finds that the original due date to submit verifications was September 14, 2020. The 10-day extension resulted in a new due date of September 24, 2020. The record reflects that Petitioner's authorized representatives failed to contact the Department by September 24, 2020, date to request a second extension, which would have extended the timeline to October 5, 2020, if granted. Finally, there was no request by Petitioner's authorized representative communicating with the Department that there was a problem getting the required verification by the due date or asking for assistance from the Department in getting the required verifications. There was no contact between the Department and the authorized representative after September 14, 2020, until the receipt of the required verifications received by the Department on October 13, 2020.

DECISION AND ORDER

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 acted in accordance with Department policy when it determined that Petitioner was not eligible for MA-LTC because of the failure to provide the required verification by the due date.

Accordingly, the Department's decision is **AFFIRMED**.

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Elizabeth Hertel, 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

Counsel for Respondent

Kelley T. McLean via electronic mail

DHHS

Wayne County (District 82) via electronic mail

BSC4 via electronic mail

C. George via electronic mail

EQADHShearings via electronic mail

Authorized Hearing Rep.

Hilleary Nguyen, Esq.
45 Rockefeller Plaza Suite 2000
New York, NY 10111

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], NY [REDACTED]