



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: April 30, 2021
MOAHR Docket No.: 21-000999
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 April 21, 2021, from Lansing, Michigan. The Petitioner was represented by Andrew Wood (P77321). The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General Elizabeth Husa-Briggs (P73907).

Department's Exhibit A pages 1-41 were admitted as evidence.

ISSUE

Did the Department properly deny Petitioner's request for Medical Assistance (MA) Long Term Care?

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 [REDACTED] 2020, the Department received an application for MA for Petitioner.
2. On October 2, 2020, a DHS-3503 Verification Checklist was generated through Bridges Data collection and sent to Petitioner, with verification due by October 12, 2020.
3. Petitioner was given two extensions to adequately provide information substantiated by the loan holder/payee of the promissory note at issue.

4. On November 13, 2020, the required verification information had not been returned to the Department.
5. On November 13, 2020, a DHS-1605 Notice of Case Action was sent to Petitioner indicating that the application was denied for failure to provide verification information.
6. On February 24, 2021, the Michigan office of Administrative Hearings and Rules (MOAHR) received a request for hearing to contest the Department's negative action.
7. On March 23, 2021, Department's Representative filed Respondent Department of Health and Human Services' Case summary indicating that the appeal was not timely filed on the 90th day after business hours.
8. On April 21, 2021, MOAHR received Petitioner's Reply to Respondent's Case Summary indicating that the appeal of the Department's decision was timely.

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.

Petitioner alleges:

Pursuant to DHS-18 Request for Hearing form, the appeal was filed timely as it was delivered to the MDHHS office on February 11, 2021. DHS-18 simply instructs the person completing the Request for Hearing to "deliver" the completed form to the local MDHHS office (Attached as Exhibit A). Furthermore, pursuant to BAM 130, at 8 (Attached as Exhibit B), electronic submissions for Medicaid are considered to be received "the date of the transmission"; BAM 130 goes on to clarify that submissions received via drop box or delivery *after the close of regular business hours* are considered to be received the next business day [emphasis added]. Petitioner's Request for Hearing was submitted electronically on February 11, 2021, at 5:17PM.

Since it was electronically delivered to the local MDHHS office on February 11, 2021, pursuant to the instruction on the DHS-18 form and BAM 130, it should be considered to be received on February 11, 2021. Being received timely, this Tribunal should consider the merits of this appeal.

Pertinent policy dictates:

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days; see Where to File a Hearing Request, found in this item.

Note: Unless otherwise stated elsewhere, computation of time for the purposes of administrative hearings is determined as follows:

- Time is measured in calendar days.
- The computation of time begins on the day after the act, event, or action occurs. (The day on which the act, event, or action occurred is not included.)
- The last day of the time period is included, unless it is a Saturday, Sunday, State of Michigan holiday, or day on which the State of Michigan offices are closed. (In such instances, the last day of the time period is the next business day.)

Example: A notice of case action is issued on August 1st. Under BAM 600, the client has 90 days to request an administrative hearing. In computing this time period, August 1st, the date on which the action was taken, is not counted. **The client must file a request for hearing by the close of business on October 30th** (unless that day is a weekend, holiday, or non-working day, in which case the request must be filed by the close of the next business day.) BAM 600 (Emphasis added)

This Administrative Law Judge finds that Petitioner's Representative filed the Request for Hearing on February 11, 2021, on the 90th day after the close of business. Therefore, the Request for Hearing is untimely, and the Request for Hearing must be **DISMISSED. IT IS SO ORDERED.**

In the alternative, Pertinent verification policy indicates:

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- Required by policy. Bridges Eligibility Manual (BEM) items specify which factors and under what circumstances verification is required.

- Required as a local office option. The requirement must be applied the same for every client. Local requirements may not be imposed for Medicaid Assistance (MA).
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. (BAM 130, page 1)

Tell the client what verification is required, how to obtain it, and the due date; see Timeliness of Verifications in this item. Use the DHS-3503, Verification Checklist (VCL), to request verification. The client must obtain required verification, but the local office must assist if they need and request help. If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. If no evidence is available, use your best judgment. BAM 130, page 3

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. Refer to policy in this item for citizenship verifications. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to two times. At renewal if an individual is required to return a pre-populated renewal form, allow 30 calendar days for the form to be returned. At application, renewal, ex parte review, or other change, explain to the client/authorized representative the availability of your assistance in obtaining needed information. Extension may be granted when the following exists:

- The customer/authorized representative need to make the request. An extension should not automatically be given.
- The need for the extension and the reasonable efforts taken to obtain the verifications are documented.
- Every effort by the department was made to assist the client in obtaining verifications.

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email or MI Bridges document upload), the date of the transmission is the receipt date. **Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a MDHHS representative are considered to be received the next business day.** (Emphasis added)

Send a case action notice when:

- The client indicates refusal to provide a verification, or

- The time period given has elapsed.


Only adequate notice is required for an application denial. BAM 130, pages 9-10

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 has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it denied Petitioner's Medical Assistance application based upon Petitioner's failure to provide verification information in a timely manner. The Department has established this case by a preponderance of the evidence on the record.

DECISION AND ORDER

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

LL/hb



Randis Lain
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

Elizabeth R. Husa Briggs, AAG via
electronic mail

DHHS

Kalamazoo County via electronic mail

BSC3 via electronic mail

C. George via electronic mail

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Petitioner

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