



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: June 7, 2021
MOAHR Docket No.: 21-002018
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

ORDER OF DISMISSAL

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 438.400 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on June 3, 2021. [REDACTED] Petitioner's father, appeared on Petitioner's behalf. Petitioner and [REDACTED] Petitioner's mother, were also present. Heather Woods, Fair Hearings Officer, appeared on behalf of the Respondent Southwest Michigan Behavioral Health. Tina Williams, Customer Service Representative with Barry County Community Mental Health, was also present.

At the onset of the hearing, Respondent moved for dismissal of the case on the basis that Petitioner's request for hearing was untimely and that the undersigned Administrative Law Judge therefore lacked jurisdiction in this matter.

Following some discussion and argument, the undersigned Administrative Law Judge ruled that the matter would be dismissed due to a lack of jurisdiction.

Respondent is a prepaid inpatient health plan (PIHP) that provides services to enrollees such as Petitioner pursuant to its contract with the State and that, as required by 42 CFR 438.402(a), must have a grievance and appeal system in place for enrollees such as Petitioner. As defined in 42 CFR 438.400(b), a "*Grievance and appeal system* means the processes the MCO, PIHP, or PAHP implements to handle appeals of an adverse benefit determination and grievances, as well as the processes to collect and track information about them."

Moreover, with respect to State fair hearings following completion of the appeal system, 42 CFR 438.408(f)(1) further provides: "An enrollee may request a State fair hearing only after receiving notice that the MCO, PIHP, or PAHP is upholding the adverse benefit determination."

However, that opportunity for fair hearing is also limited by a requirement that the request be made within 120 days of Respondent's notice regarding Petitioner's appeal: "The enrollee must have no less than 90 calendar days and no more than 120 calendar days from the date of the MCO's, PIHP's, or PAHP's notice of resolution to request a State fair hearing." 42 CFR 438.408(f)(2).

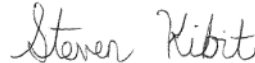
Here, the notice that Respondent was upholding the adverse benefit determination at issue was mailed November 11, 2020 while Petitioner's request for hearing was not received by the Michigan Office of Administrative Hearings and Rules until April 28, 2021, which was 157 days from the date the notice was mailed. Moreover, while Petitioner's representative reported that the request was late because Petitioner was gathering information or waiting to see what Respondent would do, that argument does not identify an exception to the clear requirement in the regulation.

Petitioner's request for hearing, therefore, exceeded the 120-day time to request a fair hearing; the Administrative Law Judge consequently lacks jurisdiction in this matter; and the matter must therefore be dismissed.

IT IS THEREFORE ORDERED that:

- The above-titled matter is **DISMISSED**.

SK/sb



Steven Kibit
Administrative Law Judge

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 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Belinda Hawks
320 S. Walnut St.
5th Floor
Lansing, MI
48913
mdhhs-bhdda-hearing-notices@michigan.gov

Authorized Hearing Rep.

[REDACTED]

[REDACTED] MI
[REDACTED]

DHHS Department Rep.

Heather Woods
Southwest Michigan Behavioral Health
5250 Lovers Lane-Suite 200
Portage, MI
49002
Heather.Woods@swmbh.org
Sarah.Ameter@swmbh.org

DHHS-Location Contact

Lynn Bennett
Barry County CMH
500 Barfield Dr
Hastings, MI
49058

Petitioner

[REDACTED]

[REDACTED] MI
[REDACTED]