



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: July 9, 2021
MOAHR Docket No.: 21-002248
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 June 9, 2021, from Detroit, Michigan. Petitioner did not appear for the hearing. Petitioner was represented by his attorney Thomas Kuzmiak, and his legal guardian, [REDACTED] who was called as a witness. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) Chantal Fennessey, who called Sharonda Dyer, Eligibility Specialist and Tamara Zander, Assistance Payments Supervisor as witnesses.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) benefits?

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 or around [REDACTED], 2021, a Long-Term Care (LTC) Application for Health Care Coverage Patient of Nursing Facility (DHS-4574) (Application) was submitted to the Department on Petitioner's behalf. A request for retroactive (retro) MA was made for the months of February 2021, January 2021, and December 2020. (Exhibit A, pp. 15-18)
 - a. The Application indicated that Petitioner was married and identified [REDACTED], 2018, as the date of Petitioner's nursing facility admission.
2. On March 9, 2021, and in connection with the application submitted, the Department sent Petitioner a Verification Checklist (VCL) instructing him to:

[s]end complete bank stmts for the Citizens acct ending in #■■■■ and the Bank of America acct ending in #■■■■ from 07/01/18-07/31/18 and from 02/01/21-03/15/21. Send checks, cancelled checks, receipts for expenditures over \$200. Have Bank/America provide status of accts/CD's clients/spouse owned in 07/2018 (our Asset Detection process found several accts owned by the client/spouse). Send funeral contracts owned by client/spouse and proof of payment. Send 2018/2020 State Equalized Value of home (this can be found on the Property Tax Assessment). Send Title, Ins, Registration for vehicles owned by client/spouse, and vehicles owned in 07/2018; if vehicles have been sold, send proof of date and amount sold for. Send 2020/21 Retirement benefit amount received by client (gross, monthly amount). Send 2020/21 document for the income received by spouse (\$17.12). Send 2020/21 Homeowner's Insurance stmt. Send 2020/2021 Utility stmts. Send Retro App if you seek help with bills for last 3 months.

Petitioner was to return the requested verifications by March 19, 2021. (Exhibit A, pp. 19-20)

3. The Department granted Petitioner's request for extension to submit the documentation requested in the VCL.
4. On or around April 8, 2021, Petitioner submitted verifications to the Department, including bank account asset information and a statement for Bank of America account ending in #■■■■ for the period of July 27, 2018 to August 14, 2018. (Exhibit A, pp. 33-39)
5. On April 12, 2021, the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising him that effective March 1, 2021, ongoing, he was not eligible for MA on the basis that he failed to verify information necessary to determine eligibility for MA. (Exhibit A, pp. 12-15).

- a. The Notice further indicates:

Please be advised that your Medicaid Application has been denied for failure to provide the requested verifications needed to determine your eligibility in the timeframe allotted. We requested the following to complete the Initial Asset Assessment, per the client's marital status: Bank of America statement for the acct ending in #■■■■ from 07/01/18-07/31/18. Statement received from 07/27/18 to 08/14/18. Next, we requested that you have Bank/America provide status of accts/CD's clients/spouse owned in 07/2018 (our Asset Detection process found several accts owned by client/spouse). This information was not received. Please be advised that you may reapply.

6. On April 30, 2021, Petitioner's attorney requested a hearing disputing the Department's actions with respect to the denial of the MA application, asserting that the requested verifications were submitted, and the Bank of America account was opened on July 27, 2018, and no additional statement is available for the month of July 2018. (Exhibit A, at pp. 3-4)
7. With the request for hearing on April 30, 2021, Petitioner's attorney submitted a screenshot from Bank of America showing details of Petitioner's account ending in #██████ and confirming that the account was opened on July 27, 2018. (Exhibit A, p. 40)

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 the present case, Petitioner requested a hearing disputing the Department's denial of his ████████, 2021, MA application which also sought retroactive coverage to December 2020. The Department's witnesses testified that because Petitioner was in a long-term-care facility and was married, an IAA needed to be completed to determine how much of the couple's assets are protected for the community spouse. BEM 402 (April 2021), pp. 1-2. An IAA is used to determine the couple's total countable assets as of the first day of the first continuous period of care that began on or after September 30, 1989. BEM 402, pp.7-8. It was undisputed that Petitioner entered the nursing facility on July 16, 2018, and that the Department was required to determine the IAA for the month of July 2018. At issue is the submission of bank account asset documentation and Petitioner's alleged failure to timely verify requested information.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (January 2021), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available

information; and if no evidence is available, the Department is to use its best judgment. BAM 130, pp. 3-4. For MA cases, clients are given 10 calendar days (or other time limit specified in policy) to provide the verifications requested by the Department. BAM 130, pp. 7-9. If the client cannot provide the verification despite a reasonable effort, the Department is to extend the time limit to submit the verifications up to two times. BAM 130, pp. 7-9. Verifications are considered to be timely if received by the date they are due. BAM 130, pp. 7-9. The Department will send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. BAM 130, pp. 8-9.

At the hearing, the Department witnesses testified in connection with the Application and because an IAA needed to be completed, it sent Petitioner the VCL on March 9, 2021, instructing him to provide requested verifications by March 19, 2021. The Department witnesses testified that Petitioner's requests for extension were granted and the final due date for the verifications was April 8, 2021.

The Department witnesses further confirmed that some of the verifications requested were timely submitted and conceded that it timely received a Bank of America statement for the account ending in # [REDACTED] for the period of July 27, 2018 to August 14, 2018. However, because Petitioner did not submit a bank statement showing the bank account asset information for Petitioner's Bank of America account ending in # [REDACTED] for the entire July 1, 2018 to July 31, 2018, period, and because it did not receive verification of additional bank accounts identified by the Asset Detection unit, the Department testified that the April 12, 2021, Notice was issued, denying Petitioner's MA Application.

At the hearing, Petitioner's legal guardian testified that he submitted verification of all of the asset information and bank account statements he was aware of for Petitioner. Petitioner's legal guardian testified, and Petitioner's attorney argued that the Bank of America account at issue ending in # [REDACTED] was opened on July 27, 2018, and no additional statement was available for the month of July 2018, prior to the July 27, 2018, date. (Exhibit A, at pp. 3-4). The Department witness stated that although it would have been considered an acceptable verification, it first became aware that the account was opened on July 27, 2018, when the Bank of America account screenshot was submitted by Petitioner's attorney on April 30, 2021, after the MA Application had already been denied. The Department witness testified that even if it had considered the bank statement submitted for the July 27, 2018 to August 14, 2018, period acceptable, Petitioner failed to submit verification of four additional CD accounts and one checking account that were detected by the Asset Detection unit. (Exhibit A, pp. 41-45)

The Department witness identified the five bank accounts that were detected as associated with Petitioner and included in the Asset Detection report. Although the Department was aware of the bank account numbers detected in the Asset Detection report, the VCL sent to Petitioner does not specify the accounts identified on the Asset Detection report and instead instructs Petitioner to "[h]ave Bank/America provide status of accts/CD's clients/spouse owned in 07/2018 (our Asset Detection process found several

accts owned by the client/spouse).“ As indicated above, Petitioner’s legal guardian testified he went to Bank of America four times to obtain documentation and to his knowledge, he submitted verification of all accounts Petitioner had at Bank of America. Ms. Zander, a Supervisor with the Department conceded that if sufficient verification of the Bank of America account ending in # [REDACTED] was received, she would have instructed the case worker to send out another VCL identifying the specific bank accounts that were detected in the Asset Detection report and included the specific account numbers on the VCL.

Upon thorough review of the evidence presented, Petitioner made a reasonable effort to timely submit verification of the Bank of America account ending in # [REDACTED] and did not otherwise indicate a refusal to provide the Department with requested information. The evidence established that Petitioner timely provided the Department with the only bank statement available for the month of July 2018. Furthermore, because the Department is required to tell the client exactly what verification is required, how to obtain it, and the due date, a denial for failure to verify the five additional accounts reflected in the Asset Detection report but not specified in the VCL is also improper.

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 did not act in accordance with Department policy when it denied Petitioner’s [REDACTED], 2021 MA Application.

DECISION AND ORDER

Accordingly, the Department’s decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Register and reprocess Petitioner’s [REDACTED], 2021, MA application to determine his MA eligibility under the most beneficial program from the retroactive period of December 1, 2020, ongoing;
2. Provide Petitioner with MA coverage under the most beneficial category, if otherwise eligible, from December 1, 2020, ongoing, in accordance with Department policy; and

3. Notify Petitioner and his AHR in writing of its decision.



Zainab A. Baydoun
Administrative Law Judge

ZB/jm

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

MDHHS-Wayne-82-Hearings
C. George
EQADhearings
AG-HEFS-MAHS – C. Fennessey
MOAHR

Petitioner – Via USPS:

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