



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 25, 2021
MOAHR Docket No.: 21-002265
Agency No.: ██████████
Petitioner: ██████████

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 hearing was held via telephone conference on July 29, 2021. Patrick Simasko participated as Petitioner's attorney. Michelle Reese, assistant to Mr. Simasko, testified on behalf of Petitioner. Geraldine Brown, Assistant Attorney General, participated as legal counsel for the Michigan Department of Health and Human Services (MDHHS). Ann Durkee, specialist, testified on behalf of MDHHS.

ISSUE

The issue is whether MDHHS failed to process Petitioner's application for long-term care (LTC) 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 ██████████, 2021, MDHHS received Petitioner's application requesting LTC-MA benefits.
2. On ██████████, 2021, Petitioner's attorney requested a hearing to compel MDHHS to process Petitioner's MA application.
3. As of the date of hearing, MDHHS had not yet processed Petitioner's application.

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. 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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's attorney requested a hearing to compel MDHHS to process Petitioner's LTC-MA application.¹ Exhibit A, pp. 3-4. It was not disputed that Petitioner applied for LTC-MA benefits on [REDACTED], 2021. Additionally, Petitioner applied for retroactive MA benefits. Exhibit A, pp. 24-25.

The standard of promptness (SOP) for processing applications begins the date that MDHHS receives an application or filing form, with minimum required information. BAM 115 (January 2021) p. 16. For MA not based on disability, MDHHS is to certify program approval or denial of the application within 45 days. *Id.* Notices are generated automatically following approval or denial. *Id.*

For all programs, upon certification of eligibility results, MDHHS must automatically notify the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (January 2021) p. 2. Notices must include the action taken by MDHHS, the reason for the action, the specific manual item which cites the legal basis for action, an explanation of the right to request a hearing, and the conditions under which benefits may be continued if a hearing is request. *Id.*, pp. 2-3.

MDHHS acknowledged that Petitioner's application remained unprocessed as of the hearing date. MDHHS contended that it should delay processing Petitioner's application until the Court of Appeals decides an appeal of an order issued by the Macomb County Circuit Court allowing a transfer of various assets and income to Petitioner's spouse. MDHHS's contention was rejected in an Order Following Prehearing Conference dated July 9, 2021, and a subsequently issued Order Denying Motion for Reconsideration to Stay Proceedings. Also, on August 11, 2021, the Court of Appeals denied MDHHS's request to stay enforcement of the spousal support order pending appeal.

Given the evidence, MDHHS failed to comply with its standards of promptness in processing Petitioner's LTC-MA application. As a remedy, Petitioner is entitled to immediate application processing.²

¹ On July 15, 2021, Petitioner's attorney also motioned for summary disposition under Mich Admin Code, R 792.10129.

² This remedy favorably resolves Petitioner's attorney's motion for summary disposition. Thus, a separate order addressing Petitioner's attorney's motion will not be issued.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to comply with its standards of promptness concerning Petitioner's applications requesting LTC-MA and retroactive benefits. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

(1) Process Petitioner's application dated [REDACTED], 2021, including the request for retroactive MA benefits; and

(2) Issue notice and benefits, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tm



Christian Gardocki

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 30639
Lansing, Michigan 48909-8139

Via Email:

AG-HEFS-MAHS@michigan.gov – G. Brown
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