



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 28, 2023
MOAHR Docket No.: 23-000997
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 March 30, 2023, from Detroit, Michigan. Petitioner appeared for the hearing with her husband/Authorized Hearing Representative (AHR) [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Alfred Guilford, Eligibility Specialist and Aqueelah Abdullah, Assistance Payments Supervisor.

ISSUE

Did the Department properly process Petitioner's 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. Petitioner is a legal permanent resident who entered the United States on or around April 18, 2019, from Croatia. (Exhibit A; Exhibit 1)
2. Petitioner's husband [REDACTED] [REDACTED] is a United States citizen. (Exhibit A; Exhibit 1)
3. On or around [REDACTED] 2022, an application was received by the Department, requesting MA benefits for Petitioner and her husband, Jeremy [REDACTED]
4. On or around January 25, 2023, the Department sent Petitioner a Health Care Coverage Determination Notice advising her that effective November 1, 2022, she was approved for full coverage MA benefits and effective November 1, 2022, [REDACTED] [REDACTED] was approved for Emergency Services Only (ESO) MA benefits. (Exhibit A, pp. 5-8)

5. On or around February 22, 2023, Petitioner requested a hearing disputing the Department's actions with respect to the MA program. In the hearing request, Petitioner asserted that she was approved for full coverage in error and should only have been approved for ESO, as she is not a United States citizen and has been a legal permanent resident for less than five years. Petitioner asserted that she has active medical coverage under a marketplace plan for 2023 and according to a [REDACTED] 2022, Marketplace Eligibility Notice, should only have been considered for limited coverage ESO. (Exhibit A, pp. 3-15)
 - a. Petitioner's hearing request also indicates that [REDACTED] [REDACTED] applied for medical coverage through the Marketplace on [REDACTED] 2022, and the application was automatically sent to the Department. Petitioner asserted that Mr. [REDACTED] was approved for ESO coverage by the Department in error, as he is a United States citizen. (Exhibit A, pp. 3-15)
6. After receiving Petitioner's hearing request, the Department issued a Health Care Coverage Determination Notice on February 27, 2023, approving [REDACTED] [REDACTED] for full coverage MA from November 1, 2022, ongoing. The Department issued a Health Care Coverage Determination Notice on February 28, 2023, approving Petitioner for Emergency Services Only MA for April 1, 2023, ongoing. (Exhibit A, pp. 12-18)

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.

To be eligible for full coverage MA, a person must be a U.S. citizen, or a non-citizen admitted to the U.S. under a specific immigration status. BEM 225 (October 2022), pp. 1-4. An individual who is a lawful permanent resident with a class code on the permanent residency card (I-551) other than RE, AM or AS is eligible only for ESO MA coverage for the first five years in the U.S. unless the alien is a qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen or a noncitizen paroled into the U.S. For at least one year under INA Section 212(d)(5). BEM 225, pp. 7-8. A qualified military noncitizen is a qualified noncitizen on active duty in, or veteran honorably discharged from, the U.S. Armed Forces. BEM 225, pp. 5-7. A person who

does not meet an acceptable alien status, including undocumented aliens and non-immigrants who have stayed beyond the period authorized by the U.S. Citizenship and Immigration Services, are eligible only for ESO MA coverage. BEM 225, p. 9. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225, p. 2.

In this case, there was no dispute that Petitioner was approved for full coverage MA in error at the time of the [REDACTED] application. There was also no dispute that Petitioner should have been approved for MA with ESO coverage effective November 1, 2022, based on her status as a non-citizen and legal permanent resident in the United States for less than five years. The Department representative testified that after receiving Petitioner's hearing request, it reversed the coverage and activated Petitioner's ESO MA from April 1, 2023, ongoing and that it approved Mr. [REDACTED] for full coverage MA for November 1, 2022, ongoing.

While Petitioner and her AHR asserted that the issue with respect to Mr. [REDACTED] MA coverage had been fully corrected, the Department had failed to fully correct Petitioner's MA coverage, as she was eligible for ESO effective November 1, 2022, ongoing. Citing potential immigration consequences of Petitioner receiving full coverage MA despite being ineligible based on her immigration status, and financial implications relating to tax penalties, as well as monthly Marketplace health plan premiums that have already been paid, Petitioner's AHR requested that the Department reprocess Petitioner's MA benefits and approve her for ESO coverage from November 1, 2022, ongoing. The Department, citing a timely notice requirement, testified that it was unable to change Petitioner's MA coverage to ESO from November 1, 2022, ongoing. (Exhibit 1).

Department policy provides that after processing an application and upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (October 2022), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). For all programs, adequate notice is given at approval/denial of an application or for an increase in benefits. For MA cases, adequate notice is given at case opening with a deductible or patient pay amount, decrease in post-eligibility patient-pay amount, when a recipient is removed due to his eligible status in another case, when adding MA coverage on a deductible case, for an increase in medical benefits, or at case opening with a divestment penalty. BAM 220, pp. 3-5. A timely notice is given for negative case actions and is mailed 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. BAM 220, pp. 4-5. Examples of negative actions are outlined in BAM 220, pp. 11-12.

There was no evidence that prior to the [REDACTED] 2022, application, Petitioner was a recipient of any MA benefits from the Department. Petitioner was considered a new applicant, as she was not a current beneficiary of MA at the time application was processed or at the time her full coverage MA eligibility was incorrectly certified. The

Department conceded that due to agency error, Petitioner's initial eligibility was incorrectly certified.

Therefore, based on the evidence presented, because Petitioner's MA application was not properly processed, and resulted in an incorrect initial eligibility decision, adequate notice to Petitioner is sufficient and the Department will be ordered to activate Petitioner's ESO MA coverage from November 1, 2022, ongoing.

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 failed to establish that it properly processed Petitioner's MA eligibility.


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. Activate Petitioner's Emergency Services Only MA coverage from November 1, 2022, ongoing; and
2. Notify Petitioner and her AHR in writing of its decision.

ZB/ml



Zainab A. Baydoun
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 Electronic Mail :

DHHS

Yaita Turner

Oakland County Pontiac-Woodward Dist.

51111 Woodward Ave 5th Floor

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MDHHS-Oakland-District-IV-Hearings@michigan.gov

Interested Parties

BSC4

M Schaefer

EQAD

MOAHR

Via First Class Mail :

Authorized Hearing Rep.

J [REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]