



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: December 21, 2023
MOAHR Docket No.: 23-007476
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On October 26, 2023, Petitioner, [REDACTED] requested a hearing to dispute the Department's decision to close his Medical Assistance (MA). As a result, a hearing was scheduled to be held on December 18, 2023, pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. Petitioner's representative, [REDACTED] appeared on Petitioner's behalf. Respondent, Department of Health and Human Services (Department), had Laurel Palermo, Long-Term Care Specialist, and Megan Sterk, Assistance Payments Supervisor, appear as its representatives. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 30-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly close Petitioner's MA?

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 was admitted to Long-Term Care (LTC) in [REDACTED] 2020.
2. On [REDACTED] 2020, Petitioner applied for LTC-MA from the Department.
3. On September 14, 2020, the Department approved Petitioner's application for LTC-MA without an initial asset assessment (IAA).

4. On July 12, 2023, the Department processed Petitioner's redetermination. The Department discovered large monthly withdrawals on Petitioner's bank statements that exceeded the patient pay amount, so the Department decided to request bank statements from the time Petitioner's guardian was appointed in 2020. The Department also decided to request proof of where the withdrawals were spent.
5. On July 12, 2023, the Department mailed a verification checklist to Petitioner. The verification checklist instructed Petitioner to provide proof of the following:
 - a. 2023 gross pension from employer;
 - b. HCB x244 complete 2020 statements and May-July 2023;
 - c. Proof of where each withdrawal was spent or transferred to for each large withdrawal made beginning 2020-current; and
 - d. Receipts for withdrawals.
6. The Department instructed Petitioner to return the requested verification to the Department by July 24, 2023. The verification checklist stated, "you must get the proofs to me or call me by the due date above. If you do not, your benefits may be denied, decreased or cancelled."
7. On July 25, 2023, the Department mailed another verification checklist to Petitioner. The verification checklist instructed Petitioner to provide proof of the following:
 - a. 2023 gross pension from employer;
 - b. HCB x244 complete 2020 statements and May-July 2023;
 - c. Proof of where each withdrawal was spent or transferred to for each large withdrawal made beginning 2020-current; and
 - d. Receipts for withdrawals.
8. The Department instructed Petitioner to return the requested verification to the Department by August 4, 2023. The verification checklist stated, "you must get the proofs to me or call me by the due date above. If you do not, your benefits may be denied, decreased or cancelled."
9. On August 11, 2023, the Department mailed another verification checklist to Petitioner. The verification checklist instructed Petitioner to provide proof of the following:
 - a. HCB x244 complete 2020 bank statements including copies of all checks written, withdrawals, and transfers; and

- b. Copies of the invoices to substantiate each expense for each transfer or withdrawal.
10. The Department instructed Petitioner to return the requested verification to the Department by August 21, 2023. The verification checklist stated, "you must get the proofs to me or call me by the due date above. If you do not, your benefits may be denied, decreased or cancelled."
11. Petitioner provided documents to the Department in response to the verification checklists, but Petitioner did not provide the 2020 bank statements and supporting invoices that the Department requested.
12. On September 6, 2023, the Department mailed a health care coverage determination notice to Petitioner to notify him that he was no longer eligible for MA effective October 1, 2023, because he did not provide verifications as instructed.
13. Petitioner had continuous LTC-MA until the Department decided to close his MA effective October 1, 2023.
14. Petitioner requested a hearing to dispute the Department's decision.

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Department approved Petitioner for LTC-MA in September 2020. The Department then provided continuous LTC-MA coverage for Petitioner until his redetermination in July 2023. During Petitioner's redetermination, the Department instructed Petitioner to provide proof of his bank account transfers dating back to 2020, and the Department closed Petitioner's MA when Petitioner failed to provide the proof as instructed. Petitioner is disputing the Department's decision to close his MA.

The Department instructed Petitioner to provide bank statements for 2020 because the Department determined that Petitioner had unexplained transfers from his bank account, the Department did not complete an IAA at application, the Department

suspected that Petitioner may have had an unreported divestment, and the Department wanted to determine if Petitioner should be subject to a divestment penalty.

The Department must periodically redetermine or renew a client's eligibility for active programs. BAM 210 (October 1, 2022), p. 1. The redetermination/renewal process includes a thorough review of all eligibility factors. Assets are an eligibility factor for LTC-MA. BEM 400 (July 1, 2023), p. 2-3. The Department must verify the value of countable assets at application, redetermination, and when a change is reported. *Id.* at p. 61. Thus, the relevant assets are the client's assets at the time of application, redetermination, and when a change is reported.

The Department properly instructed Petitioner to provide verification of his assets. However, the verification that the Department instructed Petitioner to provide was overbroad for purposes of redetermining Petitioner's eligibility for LTC-MA. The Department had already approved Petitioner for LTC-MA in 2020, so the Department was only completing a redetermination to determine Petitioner's continued eligibility for LTC-MA. At the redetermination, the Department should have only been considering Petitioner's current assets because the Department was only required to verify Petitioner's countable assets *at the time of redetermination*. Thus, the Department's verification checklist was overbroad because it instructed Petitioner to provide verification of past assets from 2020 rather than only his current assets at the time of redetermination.

The assets that Petitioner owned in 2020 before Petitioner applied for LTC-MA were relevant at the time of application in 2020. The Department should have reviewed Petitioner's assets at the time of application in 2020 to determine whether Petitioner's countable assets exceeded the limit and whether Petitioner had a divestment. Once the Department approved Petitioner for LTC-MA, the assets that Petitioner owned before Petitioner applied for LTC-MA were no longer relevant. Once the Department approved Petitioner for LTC-MA, the relevant assets were Petitioner's assets during the month being tested. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400 at p. 6-7.

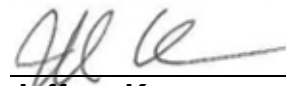
Petitioner was not required to provide the Department with verification of past assets from 2020, so the Department should not have closed Petitioner's LTC-MA for failing to provide verification of his past assets from 2020. Thus, the Department did not properly close Petitioner's MA. Therefore, the Department's decision is reversed.

DECISION AND ORDER

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 properly close Petitioner's Medical Assistance.

IT IS ORDERED the Department's decision is **REVERSED**. The Department shall redetermine Petitioner's MA eligibility, effective October 1, 2023, consistent with this decision. The Department shall not require Petitioner to provide proof of past assets from 2020. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
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
Megan Sterk
Allegan County DHHS
3255 122nd Ave Ste 300
Allegan, MI 49010
MDHHS-Allegan-Hearings@michigan.gov

Interested Parties

BSC2
M Schaefer
EQAD
MOAHR

Via First Class Mail:

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