

[REDACTED]

APPELLANT

v.

MARYLAND DEPARTMENT OF

HEALTH

* BEFORE KATHLEEN A. CHAPMAN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MCP-11B-18-10467

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

[REDACTED] (Appellant) was receiving Medical Assistance (MA) benefits under the Home and Community-Based Services Waiver for Individuals with Brain Injury (BI Waiver), a program of the Maryland Department of Health (Department), when the Department requested that he submit an application in order to redetermine his eligibility for continued assistance. When the Appellant failed to submit a timely redetermination application, on June 15, 2017, the Department's Eligibility Determination Division (EDD) notified him that his MA benefits would end effective June 30, 2017. On February 2, 2018, the Appellant filed a redetermination application and, on February 13, 2018, the Department re-approved him for BI Waiver eligibility with a certification period beginning February 2018. On March 7, 2018, [REDACTED] Vocational Case Manager with [REDACTED] Maryland [REDACTED], filed an appeal on the Appellant's behalf challenging the closure of the Appellant's BI Waiver benefits in June 2017 as well as the start date under the new certification period. Code of

Maryland Regulations (COMAR) 10.01.04.12(B)(1). On April 2, 2018, the Department transmitted the matter to the Office of Administrative Hearings (OAH).

On May 7, 2018, I held a hearing at the OAH located in [REDACTED] Maryland. COMAR 10.01.04.06. The Appellant attended and was represented by Ms. [REDACTED]. The Department was represented by [REDACTED] Administrative Officer.

The Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the Maryland State MA Program, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 10.01.04; COMAR 28.02.01.

ISSUES

(1) Did the Department properly close the Appellant's MA benefits under the BI Waiver program for failure to timely submit a redetermination application?

(2) Did the Department properly determine the certification period under the February 2, 2018 application?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted no exhibits into evidence on behalf of the Appellant.

I admitted the following exhibits into evidence on behalf of the Department:

Dept. Ex. 1 – Summary for Appeal Hearing packet, with attachments

- Summary, dated April 12, 2018 (p. 1)
- Notice of Hearing, dated April 6, 2018 (p. 2)
- Appeal letter written by [REDACTED] received on March 7, 2018 (p. 3)
- Eligibility determination, dated February 13, 2018 (pp. 4-6)
- Mail In Redetermination, dated April 21, 2017 (pp. 7-8)
- Failure to Redetermine/Recertify Eligibility, dated June 15, 2017 (pp. 9-10)
- Closing notice, dated June 30, 2017 (pp. 11-12)
- Medicaid Long Term Services and Supports (LTSS) Maryland Case Notes, from July 2, 2015 to February 5, 2018 (p. 13)

- Redetermination Application, dated February 2, 2018 (date-stamped received: February 2, 2018) (pp. 14-21)
- Narrative, from May 1, 2017 to February 5, 2018 (p. 22)
- COMAR 10.09.24.04 (pp. 23-24)

Dept. Ex. 2 – Redetermination Application, dated June 25, 2016 (date-stamped received: July 5, 2016)

Testimony

Ms. [REDACTED] testified on behalf of the Appellant and Ms. [REDACTED] testified on behalf of the Department.

FINDINGS OF FACT

Based on the evidence presented, I find the following facts by a preponderance of the evidence:

1. At all times relevant to this proceeding, the Appellant was receiving MA benefits under the BI Waiver program.
2. Through the BI Waiver program, the Appellant received Independent Support Services from [REDACTED]
3. On July 5, 2016, the Appellant filed a redetermination application for the consideration period of July 1, 2016 through June 30, 2017.
4. In the 2016 redetermination application, the Appellant listed as his authorized representative [REDACTED] an employee of [REDACTED]
5. The address for [REDACTED] is [REDACTED] Road, Suite [REDACTED] [REDACTED] Maryland [REDACTED]
6. The Appellant also listed his mailing address to be the same as [REDACTED]
7. On April 21, 2017, the Department sent a Mail In Redetermination notice to the Appellant advising him to submit a redetermination application by no later than May 12, 2017 to avoid closure of his benefits.

8. On June 15, 2017, the Department sent a Failure to Redetermine/Recertify Eligibility notice to the Appellant advising him that he must submit a redetermination application by June 30, 2017 to continue eligibility without interruption.

9. On June 30, 2017, the Department sent a Closing notice to the Appellant informing him that his MA benefits closed effective June 30, 2017.

10. Each of the three aforementioned notices was mailed to the Appellant at the [REDACTED] address.¹ Also listed on the mailing was [REDACTED] a then-employee of [REDACTED]

11. On June 30, 2017, the Department closed the Appellant's MA benefits case.

12. On September 7, 2017, the Division of Eligibility Waiver Services (DEWS) discovered that the Appellant failed to submit his redetermination application.

13. A notation made by [REDACTED] DEWS, in the Medicaid Long Term Services and Supports (LTSS) Maryland Case Notes, dated September 7, 2017, shows that so long as the Appellant's redetermination application is received by October 31, 2017, his coverage will not lapse.

14. On or about this same time (September 2017), Ms. [REDACTED] began corresponding with [REDACTED] the Appellant's authorized representative and payee, to obtain the necessary financial paperwork to submit the redetermination application.

15. Ms. [REDACTED] was not able to obtain the financial paperwork by October 31, 2017 and did not request from the Department an extension of time to submit the redetermination application.

¹ Instead of Suite [REDACTED] the address was listed as Apt [REDACTED]

16. On February 2, 2018, the Appellant filed a tardy redetermination application.

17. On February 13, 2018, the Department approved the Appellant for MA benefits under the BI Waiver program with a certification period beginning effective February 1, 2018.

18. As a result of the tardy submission, the Appellant's MA benefits lapsed for a period of seven months.

19. On March 7, 2018, Ms. [REDACTED] filed an appeal on behalf of the Appellant.

DISCUSSION

The BI Waiver program provides certain home and community-based services and supports to a person who has suffered a brain injury. COMAR 10.09.46.01B(12). "Brain injury" is defined as "an insult to the brain caused by an external or internal mechanism that occurs after birth and is not related to congenital or degenerative disease, which results in cognitive, physical, behavioral, or emotional disability that is documented in the medical record." COMAR 10.09.46.01B(3).

The regulations governing the BI Waiver program provide that an applicant's eligibility for services is to be established by the Department. COMAR 10.09.46.02C(8). With certain exceptions, all provisions of the MA eligibility regulations, located in COMAR 10.09.24, which are applicable to aged, blind, or disabled institutionalized persons are applicable to waiver applicants and participants. COMAR 10.09.46.02C(9). To continue receiving BI Waiver program benefits, MA eligibility "shall be redetermined at least every 12 months." COMAR 10.09.46.02(C)(7).

According to COMAR 10.09.24.12C(1)(d), "[t]he Department or its designee shall notify the individual or his representative of the required information and verifications needed to determine eligibility and the time standards in acting in the redetermination process." So long

as an application is timely filed and the non-financial and financial factors are met, the Department will approve the applicant for continuing eligibility. COMAR 10.09.24.12C(1)(e). And, “[t]he new period will be related to the date the application is received but may not include any months in which the individual was entitled to coverage under the current certification period.” COMAR 10.09.24.12C(1)(c). “When an applicant fails to complete the application form, or fails to provide the required information and verification to determine eligibility within the applicable time frame, the applicant shall be determined ineligible.” COMAR 10.09.24.04I(3)(e).

The Department argues that it properly closed the Appellant’s MA case because he failed to comply with the redetermination process which prevented it from making an eligibility determination. It offered into evidence three notices it sent to the Appellant informing him that his benefits would close effective June 30, 2017 if he failed to comply with the redetermination process. The Department also argues that the notices were properly sent to the Appellant’s address of record, as known by the Department. Finally, Ms. [REDACTED] testified that when the Appellant failed to file the application, the Department closed the case.

The Appellant claims that he never received the notices because the address used was incorrect or the notices were mailed to a large business complex and could have ended up at another business within the complex.

In a case such as this, where the local department makes a determination that affects services being received by an Appellant, the local department bears the burden of proof. *Comm’r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm’n*, 221 Md. 221, 231 (1959) (absent clear legislative intent to the contrary, the burden of proof lies with the party seeking to prove the affirmative of an issue before an administrative body)). The burden of proof is by a preponderance of the evidence. Md. Code

Ann., State Gov't § 10-217 (2014); *see also Bernstein*, 221 Md. at 232. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so," when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005). Under this standard, I conclude that the local department has met its burden in this case.

In the instant case, the Appellant has been receiving services from the BI Waiver program since July 8, 2013. The most current certification period is from February 1, 2018 through January 31, 2019. Prior to that, however, the certification period was from July 1, 2016 through June 30, 2017. In order for the Department to approve the Appellant for continuing eligibility, it was necessary for the Appellant to submit a redetermination application by no later than June 30, 2017. The record shows that the local department mailed three separate notices² to the Appellant at his address of record informing him of the necessity to file a redetermination. According to the notices in evidence, the Department mailed the notices to [REDACTED] care of both the Appellant and an employee, by the name of [REDACTED]³ The addresses on the notices also properly indicated the street name and number, as well as suite number.

As such, I find that the Department submitted credible documentary evidence to support its contention that it clearly informed the Appellant that he must complete the redetermination application process to continue receiving MA benefits. I am also persuaded by Ms. [REDACTED]'s off-the-cuff remark toward the end of the hearing that she did not know the Appellant had specified [REDACTED] as his mailing address; she honestly believed the Appellant's

² Mail In Redetermination, dated April 21, 2017; Failure to Redetermine/Recertify Eligibility, dated June 15, 2017; and Closing, dated June 30, 2017.

³ Ms. [REDACTED] testified that Mr. [REDACTED] is no longer employed by [REDACTED]

authorized representative and payee was receiving notices. Ms. [REDACTED] also clearly thought the addresses on the notices did not include the suite number, but the notices did.

I am also persuaded after listening to Ms. [REDACTED]'s testimony that she earnestly attempted to submit a recertification but was hampered by the authorized representative's failure to submit the Appellant's financial documentation in the timely fashion (from September 2017 going forward). When I asked Ms. [REDACTED] if she requested an extension of time from the Department, she replied that she had no idea that she could. *See* COMAR 10.09.24.04I(4). It is unfortunate Ms. [REDACTED] was unaware of this provision because it appears she might have been successful in avoiding a lapse in MA in the application given Ms. [REDACTED]'s comments in the LTSS case notes.

Finally, the Appellant asked that I consider changing the start date of the present consideration period to July 1, 2017. According to COMAR 10.09.24.04I(10)(a), any "request for eligibility and application filed after the expiration of the period under consideration shall be considered a new application, and a new period under consideration shall be established." It is undisputed that the new application was filed on February 2, 2018 and was approved on February 13, 2018 for a consideration period beginning February 1, 2018. According to the facts in this case, the Department properly established the consideration period per the new application.

For the Appellant to receive uninterrupted Waiver program benefits between certification periods, he was required to file a timely redetermination application. The Department sent proper notice before and after the June 30, 2017 deadline reminding him that the application had not been received. At that point, the Appellant was given until October 31, 2017 to further comply with the certification process. When the application was not received, the Department properly closed the Appellant MA benefits under the BI Waiver program. Finally, the

Department established the consideration period based on a new application which was filed on February 2, 2018.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and Discussion, I conclude, as a matter of law, that the Department properly closed the Appellant's MA benefits, under the BI Waiver program, based on his failure to comply with the redetermination process. COMAR 10.09.24.04I(3)(e).

I also conclude, as a matter of law, that the Department properly established the consideration period based on the Appellant's new application filed on February 2, 2018.

COMAR 10.09.24.04I(10)(a)

ORDER

I **ORDER** that the decision of the Maryland Department of Health is **AFFIRMED**.

Signature Appears on Original

May 16, 2018
Date Decision Issued

Kathleen A. Chapman
Administrative Law Judge

KAC/cj
#173779

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2017). The original petition must be filed in the circuit court within thirty days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210. The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed To:

