


**PHCA**  
PENNSYLVANIA HEALTH CARE ASSOCIATION

---



## Handling and Resolving Medical Assistance Pitfalls

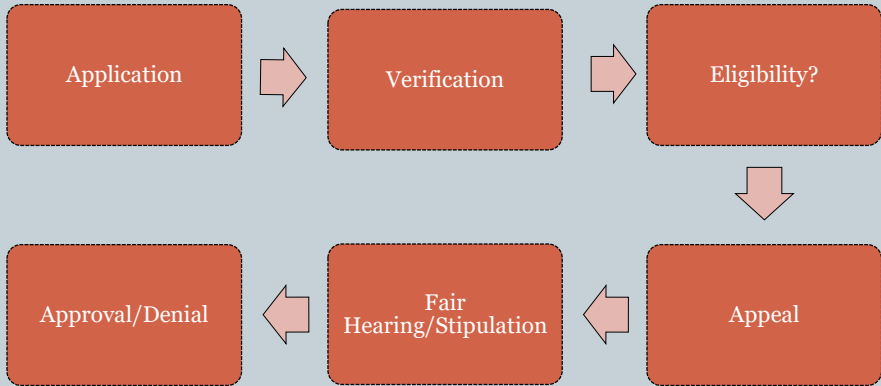

DIETRICH LAW FIRM  
610 SENTRY PARKWAY, SUITE 200  
BLUE BELL, PA 19422-2314  
610-629-6300  
[WWW.DIETRICHLEGAL.COM](http://WWW.DIETRICHLEGAL.COM)

September 24-26 2019 © COPYRIGHT 2019 Dietrich Law Firm

1

## Understanding the Process

---



```
graph LR; A[Application] --> B[Verification]; B --> C[Eligibility?]; C --> D[Appeal]; D --> E[Fair Hearing/Stipulation]; E --> F[Approval/Denial]
```

September 24-26 2019 © COPYRIGHT 2019 Dietrich Law Firm

2

## Missteps at any stage may cause ongoing problems



- **Application**
  - Facility provides unconfirmed information to the CAO  
("There may be an ABC life insurance policy")
- **Verification**
  - Facility cannot verify
- **Eligibility?**
  - Application is denied for failure to provide
- **Appeal**
  - Appeal buys more time
- **Fair Hearing/Stipulation**
  - Facility makes promises it cannot keep
- **Approval/Denial**
  - Facility loses appeal and must start over (but problems will remain)

3

## SCENARIO



- \* Linus van Pelt was admitted to your Facility for injuries sustained from tripping over his trusty blanket.
- \* Due to his lack of assets, Business Office Manager Charlie Brown files a Medical Assistance Application which is ultimately denied due to failure to provide Bank Statements.
- \* Business Office Manager Charlie Brown files a timely appeal on behalf of the Facility. After filing the appeal, Business Office Manager Charlie Brown realizes the resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt also filed a timely appeal.
- \* The resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt, is very angry at Business Office Manager Charlie Brown, repeatedly calling him a "blockhead."
- \* Caseworker Patricia "Peppermint Patty" Reichardt receives both appeals and contacts Business Office Manager Charlie Brown to request he withdraw his facility's Medical Assistance Appeal.

4

# SCENARIO



## WHAT SHOULD BUSINESS OFFICE MANAGER CHARLIE BROWN DO ?

September 24-26 2019

5

© COPYRIGHT 2019 Dietrich Law Firm

5

# Withdraw



- \* Business Office Manager Charlie Brown files a withdrawal of the Facility's appeal to Caseworker Patricia "Peppermint Patty" Reichardt.
- \* Six months later, Business Office Manager Charlie Brown realizes the resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt secretly withdrew her appeal as well, without telling anyone.
- \* Thus, the Facility has no payor source for Linus van Pelt for six months of services and must start the entire Medical Assistance Application process again.



September 24-26 2019

6

© COPYRIGHT 2019 Dietrich Law Firm

6

# Consolidate



- \* Business Office Manager Charlie Brown calls Patricia "Peppermint Patty" Reichardt immediately and asks for his appeal to be consolidated with the appeal filed by the resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt.
- \* Six months later, Business Office Manager Charlie Brown realizes the resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt secretly withdrew the consolidated appeal as well, without telling anyone.
- \* Thus, the Facility has no payor source for Linus van Pelt for six months of services and must start the entire Medical Assistance Application process again.



September 24-26 2019

7

© COPYRIGHT 2019 Dietrich Law Firm

7

# Push Ahead



- \* Business Office Manager Charlie Brown calls Patricia "Peppermint Patty" Reichardt and says he cannot withdraw or consolidate the appeal until the actual BHA Fair Hearing.
- \* Patricia "Peppermint Patty" Reichardt is annoyed but understands she cannot force "Chuck" to withdraw or consolidate the appeal. Thus, a BHA Fair Hearing is scheduled and the resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt can not stop the BHA Fair Hearing.
- \* The resident's sister/Power-of-Attorney Agent, Lucille "Lucy" van Pelt begrudgingly agrees to provide the requested Bank Statements and Linus van Pelt is approved for Medical Assistance, LTC benefits.



September 24-26 2019

8

© COPYRIGHT 2019 Dietrich Law Firm

8

# Application



- Submitting a New PA-600
  - Fill in what you know and you are able to confirm
    - ✦ Family “thinks there is an ABC Life Insurance Policy”
    - ✦ How do you prove something doesn’t exist?
  - Leave blank what you cannot confirm !!!!!
- Existing Application or Appeal
  - Prior Facility or Family filed an application
  - File another Application
  - The CAO may not include you on family/prior facility appeal

9

# Verification



- Obtaining information from Family
  - Head in the sand?
  - Private
  - Against the process altogether
- Relying on family to provide information
  - Do not assume family will do what family says they will do
  - Do not agree to something you cannot control or provide
  - Do not be a passive participant

10

# SCENARIO



- \* Elmer J. Fudd was admitted to your Facility for injuries sustained from a hunting incident. Elmer J. Fudd is fully competent and signed an authorization for Business Office Manager Daffy Duck to assist in obtaining Medical Assistance Benefits.
- \* While Business Office Manager Daffy Duck timely requested all verification items, Warner Brothers Life Insurance Company was delayed in responding. Therefore, a Medical Assistance denial was issued by the County Assistance Office which Business Office Manager Daffy Duck plans to appeal.
- \* Business Office Manager Daffy Duck hires Tweety Bird Enterprises to fly the appeal directly to the County Assistance Office on the appeal deadline date. Unbeknownst to Business Office Manager Daffy Duck, Tweety Bird's delivery is delayed due to interference from Sylvester J. Pussycat and the appeal arrives late and is deemed untimely.

11

# SCENARIO



**WHAT COULD  
BUSINESS OFFICE MANAGER  
DAFFY DUCK  
DONE DIFFERENTLY ?**

12

## Submitting an Appeal



- \* **DO NOT WAIT** until the deadline date to file an appeal
- \* Only send Medical Assistance Appeals by a method that permits confirmation of receipt such as USPS certified mail, fax, and/or email.
- \* What about hand delivery?



September 24-26 2019

13

© COPYRIGHT 2019 Dietrich Law Firm

13

## Confirm Receipt by DHS



- **Bureaucratic Black Holes?**
  - “We never received anything at the CAO”
- **Send important documents to the CAO in ways you can later confirm delivery**
  - Fax Cover Sheet (make sure fax was “confirmed” received by CAO)
  - Verified Email Address
  - USPS Certified Mail
- **Do not sit back and lose your desired effective date!**

September 24-26 2019

14

© COPYRIGHT 2019 Dietrich Law Firm

14

## SCENARIO



- \* After filing the appeal, Business Office Manager Daffy Duck receives verification of the policy through Warner Brothers Life Insurance Company.
- \* Business Office Manager Daffy Duck personally drives his only copy of the policy verification to the County Assistance Office and hands it to Caseworker Bugs Bunny.
- \* Annoyed with previous interactions involving both Business Office Manager Daffy Duck and Applicant Elmer J. Fudd, Caseworker Bugs Bunny “files” the paperwork in the trash can. At the BHA Fair Hearing before Administrative Law Judge Yosemite Sam, Business Office Manager Daffy Duck explains he already provided the policy verification to the County Assistance Office.
- \* Caseworker Bugs Bunny disputes such an account and ALJ Yosemite Sam asks Business Office Manager Daffy Duck to resend the policy verification to Caseworker Bugs Bunny within two weeks. Such a request is entered as a Stipulation of Settlement.

15

## SCENARIO



**WHAT COULD  
BUSINESS OFFICE MANAGER  
DAFFY DUCK  
DONE DIFFERENTLY ?**

16



## ALWAYS Keep a Copy



- \* ALWAYS keep a copy of ALL paperwork you submit to the County Assistance Office
- \* ALWAYS request a written signed receipt when hand delivering items to the County Assistance Office
- \* Be very careful about having Facility employees handle BHA Fair Hearings.



17

## Verification



- Ask DHS for help!
  - “What are you seeing on your end?”
  - Have you seen any accounts on the “Exchanges or AVS (Asset Verification System)”
  - Some CAOs are happy to provide financial institution names to the extent they are aware
  - PA-76 and PA-83z Forms
- Never assume family will send verification to the CAO themselves
- Never rely on family sending verification to the CAO themselves

18

## SCENARIO



- \* Marlin was recently admitted to your Facility with his friend, Dory, assisting with the placement. As a result of his condition, Marlin was unable to consent to treatment or sign an Admission Agreement, so Dory signed such documents on behalf of Marlin.
- \* While Dory is not the Power-of-Attorney Agent for Marlin, she seemed familiar with Marlin and even advised Marlin had a son named Nemo – however the mailing address she provided (42 Wallaby Way in Sydney) seems suspicious.

19

## Questions



- \* Question: Does Dory have the legal authority to contractually bind Marlin?
- \* Question: Does the Facility have an obligation to find Nemo?



20

## SCENARIO



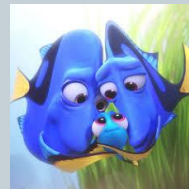
- \* Dory was recently admitted to your Facility with the assistance of her newly found parents.
- \* While Dory presents well, Dory clearly has cognitive impairment – especially short-term memory issues.
- \* Dory’s parents are very fond of Dory; however, the parents are not Power-of-Attorney Agents and are unaware of Dory’s financial status.

21

## Questions



- \* Question: May Dory consent to treatment?
- \* Question: May Dory’s parents consent to treatment on behalf of Dory?

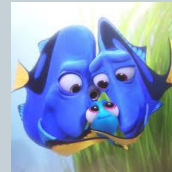


22

## Questions



- \* Question: May the Facility assist Dory with the preparation / signing of a Power-of-Attorney appointing her parents as agents?
- \* Question: What steps should the Facility take as to Dory?



September 24-26 2019

23

© COPYRIGHT 2019 Dietrich Law Firm

23

## Incapacitated Person



- ***“Incapacitated person”*** (“IP”): An adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.
- People who appear to have possible capacity or score high on a Mini-Mental Exam (MME) may still benefit from a Guardianship.

September 24-26 2019

24

© COPYRIGHT 2019 Dietrich Law Firm

24

## When to Consider Guardianship



- Resident having difficulty making care decisions and/or understanding instructions
- Resident unable to participate in the DHS MA process and gather required verification items
- Resident's family not visiting, participating and/or assisting the Resident
- Third party mishandling the Resident's assets and/or income
- Risk Management

September 24-26 2019

25

© COPYRIGHT 2019 Dietrich Law Firm

25

## Guardianship: Quick Facts



- Appoints independent advocate for Resident
- Risk liability avoidance for Facility
- Majority of Residents meet criteria
- Efficient and cost effective strategy
- Hearing within 45 +/- Days of Filing
- Process to obtain information for Medical Assistance
- Establishes basis for resolving disputes
- Terminates at Death

September 24-26 2019

26

© COPYRIGHT 2019 Dietrich Law Firm

26



**DIETRICH**  
— LAW FIRM —


**RED FLAG WARNINGS**

- ⚠️ ABSENTEE FAMILY
- ⚠️ FAMILY FAILS TO SIGN ADMISSION PAPERS
- ⚠️ FAMILY FAILS TO COOPERATE
- ⚠️ FAMILY MISSES APPOINTMENTS / DEADLINES
- ⚠️ MISSING PATIENT INCOME (*Two (2) Month Alarm*)
- ⚠️ FAMILY CLAIMS TO BE POWER-OF-ATTORNEY AGENT (BUT PROVIDES NO PROOF)
- ⚠️ FAMILY FAILS TO PROVIDE VERIFICATION DOCUMENTS
- ⚠️ FAMILY IS HOSTILE
- ⚠️ FACILITY IS SUSPICIOUS BAD ACT(S) MAY BE OCCURRING

September 24-26 2019 27 © COPYRIGHT 2019 Dietrich Law Firm

27

## Transfer Penalties



- Rebuttable Presumption – DHS may *assume* any non-Fair Market Value (FMV) “transfer” within the last 5 years was made in order to qualify for MA
  - There are legal arguments to rebut
  - Fact based analysis
  - Seek legal advice as to facts & law

September 24-26 2019 28 © COPYRIGHT 2019 Dietrich Law Firm

28

# When to Seek Help



- Uncooperative / Difficult Family
- Uncooperative Resident
- Uncooperative Financial Institutions
- Incapacitated Resident
- Missed / Late appeals
- Transfer Penalties
- Complex Cases
- Elder Law Attorney involvement

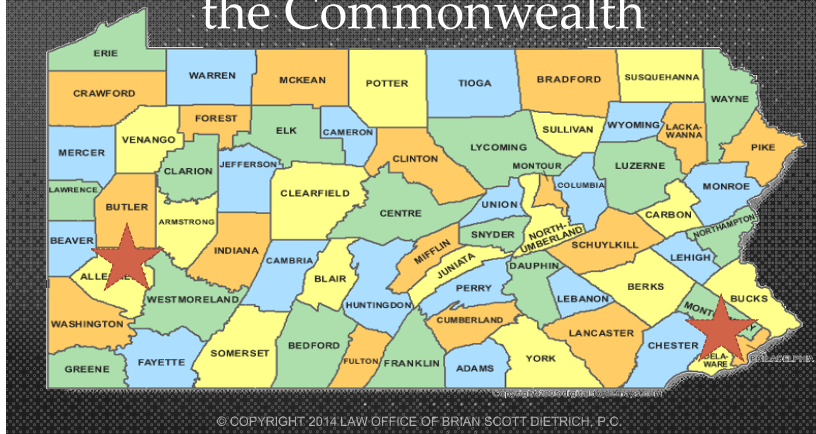
September 24-26 2019

29

© COPYRIGHT 2019 Dietrich Law Firm

29

## Serving Facilities throughout the Commonwealth



© COPYRIGHT 2014 LAW OFFICE OF BRIAN SCOTT DIETRICH, P.C.

September 24-26 2019

30

© COPYRIGHT 2019 Dietrich Law Firm

30

**Thank You for attending**  
*Handling and Resolving Medical  
Assistance Pitfalls*

**Presented by: The Dietrich Law**

Moderator:  
Dennis C. Vondran, Jr.

Panel:  
Brian Scott Dietrich, Regina B. Diamond,  
Michael F. Wenke, Taylor R. Nicholas

September 24-26 2019

31

© COPYRIGHT 2019 Dietrich Law Firm