STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [redacted],

Claimant

Reg. No: 200930175
Issue No: 2006;1038
Case No: [redacted]
Load No:
Hearing Date:
August 13, 2009
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 13, 2009.

ISSUES

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for noncompliance with work-related activities?

Was the claimant's MA properly placed into closure for a failure to provide required verifications?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant was a FIP and Medicaid recipient in Saginaw County.

(2) In June 2009, claimant was referred to triage by JET officials for failing to attend an interview and consultation with Michigan Rehabilitative Services on June 2, 2009.

(3) On June 5, 2009, claimant was sent a DHS-2444, Notice of Noncompliance.

(4) The notice scheduled a triage for June 12, 2009 at 9:00 a.m.

(5) This notice did not contain the location of the triage.

(6) Claimant did not attend triage.

(7) Claimant's FIP case was closed in response to claimant's missed triage appointment.

(8) No determination of good cause was made.

(9) Claimant's case was sanctioned and pended for closure on June 16, 2009.

(10) During a case review, it was noted that DHS had lost claimant's vitals packet, including copies of claimant's photo ID, Social Security Cards and birth certificates.

(11) On June 5, 2009, claimant was sent a DHS-3503, Verification Checklist, with a due date of June 15, 2009.

(12) This notice was not received by claimant until June 17, 2009, two days after the due date.

(13) This notification stated that DHS needed assistance to determine claimant's eligibility for a variety of programs, including Medicaid.

(14) One of claimant's children had been receiving Medicaid since her birth in 1989.

(15) Claimant's other child had been receiving Medicaid since his birth in 2000.

(16) Claimant had been receiving Medicaid during this entire period, which is estimated to be greater than 20 years.

(17) The verification request asked for verifications of citizenship for claimant and her children.

(18) Claimant had verified citizenship and identity previously when Medicaid citizen documentation requirements became law in 2006.

(19) Claimant had also verified citizenship and identity for her children at this time.

(20) Claimant did not provide citizenship verifications for herself or her children by the due date.

(21) On June 16, 2009, claimant was issued a notice of case action stating that her Medicaid case would be placed into closure for herself and her children, effective July 1, 2009 for the reason that they were not eligible because they were "not a citizen or eligible alien".

(22) On June 26, 2009, claimant requested a hearing stating that she had not been notified of the location of the triage despite numerous phone calls, and that she had already provided the Department with verifications of her family's citizenship status.

(23) A hearing was held in the matter on August 13, 2009.

(24) Claimant was represented by [redacted] of [redacted].

(25) During the hearing, claimant's attorney requested a recommended decision declaring that the Department's Medicaid citizenship verification policies applied

in this case are contrary to the federal law contained in the Children's Health Insurance Program Reauthorization Act of 2009.

(26) Claimant's attorney submitted a brief on September 18, 2009 outlining how the policies in question are contrary to federal law and requesting relief in the form of a recommended and final decision.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and to find

employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called "noncompliance". BEM 233A defines noncompliance as failing or refusing to, without good cause:

> …Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider..." BEM 233A p. 1.

However, a failure to participate can be overcome if the client has good cause. Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the claimant. BEM 233A. The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. BEM 233A.

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. If a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. **Good cause must be considered, even if the client does not attend.** BEM 233A.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

Claimant argued at hearing that the Department's notice of triage was insufficient, pointing to the fact that the DHS-2444 in the case does not contain notice of the location of the triage. The Administrative Law Judge agrees with this argument.

Insufficient notice is no notice at all. The Department's notice of triage, while giving claimant a date and time for her triage, did not contain the location for that triage. Contrary to assertions that the DHS branch office was the only logical place for a triage, the claimant could not be faulted for thinking that her local JET office or MRS office (which was at issue in the current case) could also be a possible location for the meeting. Furthermore, claimant testified that calls to her branch office to inquire as to the location of the triage were not returned. Given the Department's sporadic history of returning phone calls, the undersigned finds claimant's testimony credible.

Therefore, given that the DHS-2444 contained no notice of the location of the triage, and given that there were several potential locations for the triage, and that the Department did not return claimant's calls inquiring as to the location of the triage, the undersigned holds that the claimant could not have attended the triage.

BEM 233A states that a claimant cannot be terminated from the JET program without first scheduling a triage with the claimant. As claimant's notice contained no location and claimant was left without alternative notification of the location of the triage and thus could not have attended the triage, the undersigned further holds that the Department failed to schedule a triage with the claimant. As such, the Department was in error when it placed claimant's case into closure for failing to attend the triage.

However, even if the undersigned held that the triage notice was sufficient, the Department's triage procedures were inadequate. While it is true that the claimant could not have

attended the triage, it is also true that BEM 233A requires the Department to hold a triage and make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made or the triage in question ever held. Department Exhibit 1, the Hearing Summary, states that the noncompliance was assessed because claimant did not attend the triage. There is no mention of an independent good cause determination made using known facts, as described in BEM 233A.

Additionally, Department Exhibit 4, the DHS-2444 has written across the top "No call/no show. No good cause granted", which implies that the Department failed to grant good cause specifically for claimant's failure to appear at the triage. Furthermore, at no point in the evidentiary record is there proof that the Department held a triage when claimant failed to attend.

Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that claimant did not show up for the triage, and that all evidence in the file shows that the reason for the noncompliance assessment was because claimant did not show up for the triage, the undersigned must hold that the Department did not hold the triage, or make an individual assessment as to claimant's good cause using known facts. This is plain error.

DHS is required to hold the triage without the client, and discuss and consider all factors that are known about the client that may have contributed to good cause. There were several known factors in this case: claimant had already rescheduled her MRS appointment several times due to surgery and other medical reasons; claimant had some serious medical issues, and; as claimant testified, MRS had been notified that she may not have been able to make the appointment in question because of another potential surgery.

A good cause determination must then be made, using these known factors. BEM 233A, p. 7. The available evidence shows that this determination was not made, and implies that the triage was not held, thus placing the Department in error.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should never have closed for failing to attend a triage for which she had insufficient notice.

With regard to the Department's claim that claimant failed to return citizenship verifications, eligibility is determined through a claimant's verbal and written statements; however, verification is required to establish the accuracy of a claimant's verbal and written statements. Verification must be obtained when required by policy, or when information regarding an eligibility factor is incomplete, inconsistent, or contradictory. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130.

In the current case, it is worth noting that there is no policy that states that a client must provide further proof of citizenship or identity after initially supplying adequate verification to Department at application. Furthermore, there is no policy that requires a claimant to submit verification of citizenship at any time other than application.

The Department contends that claimant did not return any of her verifications, as required by the regulations, and was therefore was terminated from her MA benefits because the Department was unable to determine eligibility.

This is unsupported by policy. First, policy is clear that the claimant would have needed to supply these verifications in order to originally be approved for benefits—she would not have been able to get a Medicaid approval for herself or any of her children if she had failed to return

citizenship verifications. The fact that claimant was receiving Medicaid benefits for years after this evidence became a requirement should be proof enough that the requested verifications were supplied at that time. There is no policy that requires a claimant to submit verifications years after the fact for a verification type that the Department had already received. Therefore, the Department did not need the citizenship verifications because they were required by policy, nor was the Department "unable to determine eligibility".

Second, as the Department testified, the Department was not unsure of claimant's citizenship or residence status. The Department had merely lost the original paperwork and wanted a complete file. The undersigned will not penalize a claimant for an issue that arose because the Department was unable to keep track of its own paperwork.

Third, the undersigned believes policy only requires claimant-supplied proof of citizenship at application. The policy items on these subjects are rife with references to applications and the denying of applications for individuals who have failed to provide citizenship verification. There is no mention of a claimant having to provide the same verifications years after the fact in order to avoid benefit closure.

There is a good reason for this: such a policy would be nigh unworkable, opening the door to sanctions and abuse. Such a policy would allow for the Department to repeatedly request already-returned verifications, and a claimant would have to return those verifications again and again to avoid case closure.

While there is nothing prohibiting the Department from requesting the verifications, there is no policy supporting the termination of claimant benefits for failing to return verifications that the Department already had in its possession. The undersigned will not uphold a Department

ability to require verification submissions that, by all evidence in the record, it had already received.

Finally, nothing in the policy supports sanctioning a claimant for the Department's own mistakes. Regardless of whether the claimant did or did not pay heed to the DHS-3503, the fact remains that all of this stems from a mistake made by the Department when it was unable to locate claimant's complete file where, presumably, claimant's citizenship verifications reside. Sanctioning the claimant for that mistake is both unconscionable and a violation of the policy.

Claimant also contends that she did not receive the request for verifications in a timely manner, and therefore, could not have returned them as requested.

Claimant testified that she received the DHS-3503 two days after the due date. Given the other errors in this case, the undersigned finds this testimony highly credible.

Furthermore, the Department has not proven satisfactorily that they sent the claimant the notifications in a timely manner.

Therefore, the undersigned holds that the Department has not met its burden of proof in showing that claimant was sent the DHS-3503 in a timely manner. Therefore, it must be found that claimant did not receive her verification packet in a timely manner.

The Department claimed that the problem was the new Bridges system; it only allowed a benefit closure when the Department could not find claimant's citizenship packet and claimant did not return the requested citizenship information.

The undersigned, upon reflection, is unsympathetic to this argument. Computer code, even one as riddled with errors as the Bridges system, cannot be used to justify a policy violation. The undersigned believes that policy is quite clear—no claimant should have to re-verify information years after the fact if this information was already submitted, and

acknowledged, by the Department. The record shows that the Department was already in possession of these documents at one time. Therefore, claimant should not be sanctioned for failing to return said documents.

If Bridges does not allow for entry of a Department error with these verifications, the solution is not to sanction the claimant or request the claimant's assistance to fix a Department error. The solution is to enter a corrections ticket, notify the Bridges programmers, and get the problem fixed.

Finally, it is noted that the claimant's attorney specifically requested the undersigned to issue a recommended decision in this matter. At issue was the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3. CHIPRA included a provision that amended the citizenship documentation requirements added by the Deficit Reduction Act of 2005 (DRA) to provide that children who were initially eligible for Medicaid or CHIP as deemed newborns (because their mother was a Medicaid recipient at the time of their birth) shall be considered to have provided satisfactory documentation of citizenship and identity when their eligibility is renewed and "shall not be required to provide further documentary evidence on any date that occurs during or after the period in which the individual is eligible for medical assistance on such basis". 42 USC 1396b(x)(2)(D). This act became effective on April 1, 2009.

In all cases, an Administrative Law Judge is to issue a final decision unless the Administrative Law Judge does not believe the applicable law supports DHS policy, or that DHS policy is silent on the issue. BAM 600. For cases involving MA client eligibility, the Administrative Law Judge is to issue a recommended decision if he believes that a MA policy that is at issue in the current case is in conflict with the federal law.

Unfortunately, while the undersigned is of the belief that the Department policy referenced by the claimant is most likely in conflict with the new requirements of CHIPRA, he must respectfully decline to issue a recommended decision.

It is a long standing principal of law that any decision must be narrowly tailored to decide the case at hand on the narrowest grounds possible. If a case can be decided on narrow grounds, without requiring a wholesale rewrite of the policy involved, the Administrative Law Judge will do so.

The narrowest grounds on which to decide the current case is the finding that the Department had no reason to request verifications that were already supposed to be in the possession of the Department. As a general principal, the Administrative Law Judge declines to go beyond that ruling and order a recommended re-writing of Department policy, regardless of the merits of such a re-writing.

Furthermore, while BAM 600 states that a recommended decision is to be issued if the MA policy at issue in the current case conflicts with federal law, the undersigned does not feel that this provision is applicable to the situation at hand, because the policy at issue in the current case is not in conflict with the federal law.

CHIPRA policy appears to impact the provisions found in BEM 225, Citizenship. This policy lays out the verification requirements for the MA program and contains the issue affected by the new CHIPRA law—that all potential and current MA recipients must provide physical proof of their citizenship, regardless of age or deemed newborn status.

However, the case at hand dealt entirely with the policy contained within BAM 130, Verification and Collateral Contacts, and the general issue of whether the Department could re-request verifications—any verifications, and not necessarily citizenship verifications for

Medicaid—that it already possessed, or should have had in its possession, and issue sanctions if it did not receive these verifications. The Administrative Law Judge confined the opinion to that general principal, and was not singling out MA policy only for his decision; the decision would have remained the same regardless of whether case involved MA verifications, FAP verifications, or FIP verifications.

Therefore, as the policy involved was a general policy as invoked by BAM 130, and not the specific MA policy as invoked by BEM 225, the undersigned does not believe that a recommended decision would be required, or supported by policy. For that reason, the request for a recommended decision on claimant's CHIPRA claims is, respectfully, denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was in error when claimant's case was closed without a triage. The Department was also in error when it placed claimant's and claimant's children's Medicaid case into closure based on claimant's failure to return verifications that had previously been submitted.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

Claimant's request for a recommended decision declaring that the Medicaid policy applied in this case is contrary to federal law is DENIED.

The Department is ORDERED to remove all penalties and sanctions against claimant's FIP case resulting from the actions at hand and restore FIP benefits retroactive to the date of negative action, issuing supplemental benefits if necessary. The Department is FURTHER

ORDERED to, if necessary, reschedule claimant for triage and make a good cause determination consistent with the policies found in BEM 233A.

Finally, the Department is ORDERED to remove all negative actions against claimant's MA case resulting from the current issue, and restore MA benefits for all group members retroactive to the date of negative action.

Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 03/19/10

Date Mailed: 03/26/10

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

RJC/dj

cc: [redacted]