

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: 2010-30838

Issue No: 2017

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 19, 2010

Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 telephone hearing was held on May 19, 2010.

ISSUE

Did the DHS properly process claimant's QMB?

FINDINGS OF FACT

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

- (1) On October 26, 2009, claimant moved from Tennessee to Michigan.
- (2) On November 6, 2009, claimant applied for assistance with the Michigan DHS.
- (3) The individual who had personal knowledge of the case was not present at the administrative hearing and not available for testimony and/or cross examination.

(4) The individual present at the administrative hearing did not know but stated that she “guessed” that that claimant’s worker had a phone conversation with the Human Services department in Tennessee and was informed that claimant was not receiving medical in Tennessee but was receiving QMB, Part B.

(5) The DHS opened claimant’s MA but did not register QMB, Part B. The department did not send any notice to claimant informing her that her MA was open and/or that the QMB, Part B was denied and/or not being opened at application in Michigan. Nor did the department send any information to claimant informing her that she was and/or was not receiving QMB in Tennessee.

(6) The individual present at the administrative hearing testified that at application it is customary DHS practice to process/register the medical application along with QMB, Part B. In this case, the DHS failed to register the MCS.

(7) The individual present at the administrative hearing testified that the department is required to send a notice on a disposition of MA. The department testified that it would send a notice on the MCS but if the DHS failed to register the MCS no notice would be triggered.

(8) In March, 2010, claimant discovered that she was being charged for the Part B premium. Claimant contacted the Michigan DHS regarding her as to why Michigan was not paying the Part B.

(9) Tennessee stopped paying claimant’s Part B in February, 2010. Claimant had no knowledge or information of the same.

(10) Claimant was charged for QMB payment for March and April, 2010.

(11) On March 22, 2010, the DHS issued a DHS-1605 informing claimant that she was denied for MCS. The individual present at the administrative hearing testified that she did not have any information or knowledge as to why claimant was denied.

(12) On March 27, 2010, a new budget was run and MCS was approved to begin April 1, 2010. A new DHS-1605 was generated on March 27, 2010 showing “MCS was approved to begin April 1, 2010.” Hearing Summary dated 4/6/2010.

(13) On March 25, 2010, claimant filed a hearing request disputing the MCS payment withdrawn from her account for Part B coverage for March and April, 2010.

CONCLUSIONS OF LAW

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Applicable policy cited by the department on the Hearing Summary is found in Items: BAM Item 110; BEM Item 165. BEM Item 165 is the Medicare Savings Program. QMB eligibility states in part:

Begin QMB coverage the calendar month after the processing month. The processing month is the month to which you make the eligibility determination. QMB is not available for past months or the processing months. BEM Item 165, p. 3.

The facts in this case are very confusing. Part of this was due to the individual who had personal knowledge of this case not being present at the administrative hearing for testimony and/or cross-examination. Upon inquiry, the individual present at the administrative hearing believes that at application the DHS was aware that claimant was receiving QMB from Texas but not MA due to a conversation the Michigan DHS worker had with the Tennessee Department of Social Services. If this is the case, then it is also reasonable to assume that the Michigan DHS

worker also discussed when MCS eligibility would end. The department did testify at the administrative hearing that policy would require that the department process the medical along with the MCS application. This information should be registered. However, the DHS failed to register the MCS and/or failed to “tickle” the case for Part B eligibility at the point at which it ended in Tennessee.

However, this case became very complicated by the fact that there is no information which would indicate what the worker actually did. Moreover, the department failed to issue any notice to claimant to let her know that the outcome of her November, 2009 application for MCS was not being paid and/or not being processed by Michigan and/or that, in fact, Michigan was denying claimant eligibility at that time. The department contends that the claimant needed to reapply. However, there is no indication that the department notified claimant of this need, and/or of a denial of the MCS.

The DHS can certainly exercise its prerogative to send an individual to represent the department at an administrative hearing who does not have personal knowledge of the case. However, the department is not entitled to a lesser burden and is still required to meet its burden of proof as required under law and policy. As noted in the Findings of Fact, a March 22, 2010 letter was issued denying the MCS in Michigan when in fact, it had been discontinued in Tennessee and verification was available to say that it was denied. Moreover, based upon the testimony of the representative at the administrative hearing, the worker in this case would have had a conversation with Tennessee in November and known when the MCS was going to stop. The evidence on the record at the administrative hearing failed to establish with relevant and accurate evidence why these procedures were not followed. Nor did the DHS establish with relevant and accurate evidence the reasons for doing what it in fact did do (i.e., the 3/22/2010 denial).

After a careful review of the substantial and credible evidence on the whole record, this ALJ finds that the department failed to meet its burden of proof in this case. Policy clearly requires the department to process an MCS case. If, in fact, the department delayed processing the case, it is not due to claimant's failure to apply. Claimant applied on November 6, 2009. The department did not issue any notice to claimant informing her that the MCS was denied and/or that claimant needed to come back in and reapply. Claimant had to pay two months out of pocket until she inquired with the department and was told at that point to reapply. The department has failed to meet its burden of proof and failed to process claimant's application correctly. Claimant is entitled to the two months of Part B to which Michigan should have paid. The department is ordered to reimburse claimant for the Part B for February and March 2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly processed claimant's MCS application on November 6, 2009.

Accordingly, the department's action in this case is, hereby, REVERSED.

The department is ORDERED to pay claimant for the February and March 2010 MCS payments claimant was required to make. It is so ORDERED.

/S/

Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 4, 2010

Date Mailed: June 7, 2010

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 receipt 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.

JS 

cc:

