

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 201131884
Issue No: 2018
Case No: [REDACTED]
Hearing Date:
June 22, 2011
Otsego County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on April 27, 2011. After due notice, a telephone hearing was held on Wednesday, June 22, 2011.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's eligibility for retroactive Medical Assistance (MA)?

FINDINGS OF FACT

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

1. The Claimant applied for Medical Assistance (MA) for her son on March 7, 2011.
2. The Department approved the Claimant's application for Medical Assistance (MA).
3. The Claimant applied for retroactive Medical Assistance (MA) for February of 2011.
4. The Claimant's son moved in to the Claimant's home on December 18, 2010, and she reported to the Department that her son was a member of the household on her application for benefits on March 7, 2011.
5. On April 7, 2011, the Department denied the Claimant's application for retroactive Medical Assistance (MA).

6. The Department received the Claimant's request for a hearing on April 27, 2011, protesting the denial of her application for retroactive Medical Assistance (MA).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM). The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Family Independence Agency (FIA or agency) policies are found in the State Emergency Relief Manual (ERM).

Retro MA coverage is available back to the first day of the third calendar month prior to:

- The current application for FIP and MA applicants and persons applying to be added to the group.
- The most recent application (not redetermination) for FIP and MA recipients.
- For SSI, entitlement to SSI.

A person might be eligible for one, two or all three retro months, even if not currently eligible. The DHS-3243, Retroactive Medicaid Application, is used to apply for retro MA. Only one DHS-3243 is needed to apply for one, two or all three retro MA months.

A person's absence is temporary if for the month being tested:

- His location is known; and
- There is a definite plan for him to return home; and
- He lived with the group before the absence; and
- The absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S. BEM 211.

An absence is never temporary when:

- The month being tested is an L/H month (see BPG) for the absent person; or
- The absent person is in one of the following on the last day of a past month or on the processing date for current and future months:
 - Long-term care (LTC) facility.
 - Adult foster care facility.
 - Home for the aged.
 - Licensed child foster care home.

- Child caring institution. BEM 211.

Therefore, the above persons are never considered to be living with others. A child who has resided in a hospital for 30 or more days is not considered to be living with others and is a fiscal group of one. Certify for 12 months before re-determining eligibility for the child. BEM 211.

A dependent child can be temporarily absent from only one home. When a child spends time with two parents who do not live together, you must determine a primary caretaker. Scheduled vacations and visitation do not interrupt primary caretaker status. BEM 211.

The Department has the burden of proving that its actions were a proper application of its policies. The Department had a duty to present the following:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600.

On March 7, 2011, the Claimant applied for retroactive Medical Assistance (MA) for her son for February of 2011. The Department denied this application because the Claimant had not reported to the Department that her son was living in her household during the month of February of 2011.

The Claimant reported to the Department that her son was living in her household on April 7, 2011. The Claimant testified that her son returned to her household on approximately December 18, 2010, for the holidays. At some point after that it was decided that the Claimant's son would live with her permanently.

In this case, the Department has failed to establish that it properly denied retroactive coverage for the Claimant's son. Although the Claimant failed to report that her son was a member of her household in a timely manner, the Department failed to establish that the Claimant's group size affected eligibility for Medical Assistance (MA). The Department failed to establish that the Claimant's son was not eligible for retroactive Medical Assistance (MA) independent from her mother's household.

The Department has failed to establish that it properly determined eligibility for the Claimant's son to receive retroactive Medical Assistance (MA) for February of 2011.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides Accordingly, the Department's retroactive Medical Assistance (MA) eligibility determination is REVERSED. It is further ORDERED that the Department shall:

1. Initiate a determination of the Claimant's eligibility for retroactive Medical Assistance (MA) for the Claimant's son for February of 2011, and reprocess the March 7, 2011 application for retroactive Medical Assistance.
2. Permit the Claimant to clarify at what point her son was no longer visiting, and was living in her household.
3. Provide the Claimant with written notification of the Department's revised eligibility determination.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 14, 2011

Date Mailed: July 14, 2011

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.

KS/tg

CC:

