

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201275951
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: April 4, 2012
County: Washtenaw DHS (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on April 4, 2012 from Ypsilanti, Michigan. Participants included the above-named claimant. Irene Lallas testified on behalf of Claimant. [REDACTED] of [REDACTED] testified and appeared as Claimant's attorney and authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's Medical Assistance (MA) eligibility due to a failure to verify eligibility.

FINDINGS OF FACT

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

1. Claimant was an ongoing MA benefit recipient eligible for Medicaid subject to a monthly deductible.
2. DHS processed Claimant's eligibility so that Claimant's Medicaid was automatically met every month because of unspecified medical expenses.
3. On 8/22/12, DHS initiated terminated of Claimant's MA benefit eligibility, effective 9/2012, due to not having eligibility verification of Claimant's income and basis for disability.

4. On 8/29/12, Claimant requested a hearing to dispute the MA benefit termination.
5. On an unspecified subsequent date, DHS determined Claimant to be eligible for Medicaid subject to a \$2488/month deductible, effective 9/2012, in part, based on a monthly income of \$2916.67.

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). DHS 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 Reference Tables Manual (RFT).

It should be noted that Claimant requested numerous special accommodations for the administrative hearing. Some accommodations were granted (e.g. allowing a friend of Claimant's to be present) and others were not (e.g. a morning hearing and providing Claimant with advance notice of questions). Claimant was given opportunities throughout the hearing to note any discomforts or problems. The hearing finished without any objections by Claimant concerning the accommodations.

Claimant's hearing request disputed a DHS case action from 8/29/12 which terminated MA benefit eligibility. A Notice of Case Action was not presented but DHS stated that the termination occurred because DHS did not possess verification of Claimant's income or disability. It should be noted that DHS did not claim that Claimant failed to verify information, just that DHS did not possess the verifications. DHS did not establish any failure by Claimant to justify the termination. It is found that the benefit termination was improper. The dispute concerned the remedy Claimant is entitled to receive.

Prior to the benefit termination, Claimant was eligible for Medicaid subject to a \$2448 monthly deductible which was automatically met due to chore services expenses. When DHS reinstated benefit eligibility, Claimant was still eligible for Medicaid subject to a \$2448 monthly deductible, but the Medicaid eligibility was not automatic. If a group member is receiving personal care services in their home, income eligibility exists for the entire month and continues. BEM 545 (7/2011), p. 5.

During the hearing, attempts were made to determine how much Claimant paid in home help services. Claimant presented no evidence of her monthly home help obligation. DHS provided no evidence that the obligation was improperly budgeted prior to the MA benefit termination. The lack of preparation from both sides makes sense because the dispute leading to Claimant's hearing request concerned a different issue- MA benefit termination based on DHS' lack of verification of income and disability. Claimant's attorney contended that DHS should have reinstated ongoing MA benefit eligibility by continuing to budget a \$2488 monthly home help expense because a timely hearing request was submitted.

A timely hearing request is a request received anywhere in the department within 11 days of the effective date of a negative action. BAM 600 (10/2012), p. 18. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. *Id.* Upon receipt of a timely hearing request, DHS is to reinstate program benefits to the former level for a hearing request filed because of a negative action. *Id.*

DHS contended that Claimant's hearing request dated 8/29/12 does not entitle Claimant to full benefit reinstatement because the home help expense removal was a completely separate case action, one requiring a separate hearing request. Pending the hearing decision, restored benefits must not be reduced or terminated unless:

- a change not related to the hearing issue occurs that affects the recipient's eligibility or benefits; and
- the AHR or, if none, the recipient fails to request a hearing about the change after the subsequent notice of negative action.

Id., pp. 19-20

It was not disputed that Claimant requested a subsequent hearing when DHS took the subsequent adverse action. As noted above, DHS must not reduce Claimant's eligibility because Claimant did not fail to request a hearing about the change. Thus, even if it was undisputed that DHS took separate case actions to Claimant's MA benefit eligibility, the result would no different from looking at the DHS actions as part of one action.

A hearing attached to Claimant's subsequent hearing request has not yet occurred. When it does, DHS and Claimant may present arguments and evidence concerning the removal of home help expenses. Until the hearing occurs, Claimant is entitled to receive MA benefits as they were prior to the action taken by DHS on 8/22/12.

Claimant also wanted to dispute the amount of her deductible based on a reported change in income. It was not disputed that Claimant's only income came from spousal support. DHS budgeted Claimant's MA benefit eligibility based on monthly spousal support payments of 2916.67. Claimant contended that she typically received \$2916.67 in support payments, but that DHS failed to factor months when Claimant received \$0 income.

For non-child support income, DHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 (10/2010), p. 4. DHS is to use income from the past 60 or 90 days for fluctuating or irregular income, if the past 30 days is not a good indicator of future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. *Id.*, p. 5. For irregular income, DHS is to determine the standard monthly amount by adding the amounts entered together and dividing by the number of months used. *Id.*, p. 7.

Claimant presented a 12 month payment history of her spousal support. The presented document was dated 1/2/13. Based on the presented verification, Claimant's income appears to be best represented by an irregular income analysis.

The payment history verified that Claimant received support payments of \$2916.67 in 11 of 12 months in 2012. Claimant contended that her husband is regularly in arrearage. The amount of support arrearage is irrelevant; all that matters is the amount that Claimant receives.

Claimant also contended that the payment history verified that she received spousal support in only 10 of 12 months because the payment history verified no payments in 1/2013. A payment history dated for the second date of a month can only verify an absence of payments in the days prior to the print date of the report. Thus, Claimant's payment history only verified Claimant received no support payments on 1/1/13. It is highly possible that Claimant received a 1/2013 payment on some date after 1/1/13. Claimant's income is determined to be \$2673.16, the average monthly support payment Claimant received over a 12 month period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated and reinstated Claimant's MA benefit eligibility. It is ordered that DHS:

- (1) redetermine Claimant's eligibility, effective 9/2012, subject to the finding that Claimant's monthly income is \$2673.16;
- (2) redetermine Claimant's eligibility, effective 9/2012, subject to determining that Claimant is responsible for \$2488 in home help expenses, pending the outcome of yet to be held hearings; and
- (3) supplement Claimant for any benefits not issued as a result of the improper DHS actions.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/16/2013

Date Mailed: 4/16/2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

