

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-78089
Issue No.: 2018
Case No.: [REDACTED]
Hearing Date: February 6, 2013
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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, a hearing was held on February 6, 2013, in Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] FIM.

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA)?

FINDINGS OF FACT

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

1. On May 1, 2012, Claimant applied for Medical Assistance (MA) and retroactive MA as of March of 2012.
2. On March 31, 2012, Claimant was hospitalized.
3. On April 8, 2012, Claimant was discharged from the hospital to a nursing home for rehabilitation.
4. On June 8, 2012, Claimant was discharged from the nursing home to his home.

5. The Department denied Claimant's MA application for the months of March, 2012, April, 2012 and May 2012 for the reason that Claimant was not, *inter alia*, a Caretaker Relative.
6. The Department approved Claimant's MA application as of June 1, 2012 as a Caretaker Relative.
7. Other than Claimant's hospitalization and long-term care stay, Claimant's family circumstance was the same for the months March of 2012 through June of 2012.
8. On June 28, 2012, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure. calculation.
9. On September 10, 2012, Claimant filed a hearing request, protesting the denial of the application and arguing that Claimant was eligible for Caretaker Relative MA.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

In the present case, on May 1, 2012, Claimant applied for Medical Assistance (MA) and retroactive MA as of March of 2012.

On March 31, 2012, Claimant was hospitalized. On April 8, 2012, Claimant was discharged from the hospital to a nursing home for rehabilitation. On June 8, 2012, Claimant was discharged from the nursing home to his home.

The Department and Claimant do not dispute that other than Claimant's hospitalization and long-term care stay, Claimant's family circumstance was the same for the months of March of 2012 through June of 2012.

The Department denied Claimant's MA application for the months of March, 2012, April, 2012 and May 2012 for the reason that Claimant was not, *inter alia*, a Caretaker Relative. The Department approved Claimant's MA application as of June 1, 2012 as a Caretaker Relative. It is noted that Claimant is not appealing the Medical Review Team denial based on disability; rather, Claimant is appealing the denial of Caretaker Relative MA.

CARETAKER RELATIVE

The Department argues that it properly denied Claimant's Caretaker Relative MA application for the months of March 2012 through May 2012 because Claimant was not living with a dependent child while he was in the hospital and nursing home.

BEM 135, p. 1 defines a "caretaker relative" as follows:

A caretaker relative is a person who meets all of the following requirements:

- Except for temporary absences, the **person lives with a dependent child**. Use "CARETAKER RELATIVE NONFINANCIAL TEMPORARY ABSENCE" below. Dependent child is defined later in this item. (Emphasis added.)
- The person is:
 - The parent of the dependent child; **or**
 - The specified relative (other than a parent) who acts as parent for the dependent child. Specified relative is defined later in this item. Acts as parent means provides physical care and/or supervision.
- The person is not participating in a strike; and, if the person lives with his spouse, the spouse is not participating in a strike. Use the FIP striker policy in BEM 227.
- The **MA** eligibility factors in the following items must be met.
 - BEM 220, Residence.
 - BEM 221, Identity.
 - BEM 223, Social Security Numbers.
 - BEM 225, Citizenship/Alien Status.
 - BEM 255, Child Support.
 - BEM 256, Spousal/Parental Support.
 - BEM 257, Third Party Resource Liability.
 - BEM 265, Institutional Status.
 - BEM 270, Pursuit of Benefits.

(Emphasis added.)

The Department's position is that Claimant met all of the eligibility criteria above, except **living with** a dependent child.

BEM 135, p. 3, 4 instructs:

Living together or **living with** others means sharing a home, where family members usually sleep, except for temporary absences. A temporarily absent person is considered in the home.

A person's absence is temporary if:

- His location is known; **and**
 - There is a definite plan for his return; **and**
 - He lived with the group before the absence;
- Note:** Newborns and unborns are considered to have lived with the group; **and**
- The absence has lasted, or is expected to last, 30 days or less.

Exceptions:

.....

- **A person in a medical hospital is considered in the home.** (Emphasis added.)

.....

March and April of 2012

Per the above criteria, Claimant was **living with** his minor child while he was in the medical hospital, from March 31, 2012 through April 8, 2012. Therefore, the Department was not correct in denying Claimant's application for retroactive Caretaker Relative MA for the months of March and April of 2012.

May of 2012

Claimant was not eligible for Caretaker Relative MA for the month of May, 2012, because he was absent from the home and not living with his minor child, as he was in a nursing home for the month of May and discharged in June of 2012. See BEM 135, p. 4, which states:

Presume that a placement in a residential facility (other than a medical hospital) will last over 30 days.

....

Consider the stay temporary **only** if the facility provides a signed statement that includes an expected discharge within 30 days after the admission.

In the present case, no evidence suggests that the nursing home provided a signed statement with respect to being discharged within 30 days, and Claimant in fact stayed at the nursing home for longer than 30 days. Therefore, the Department was correct in denying Claimant's MA application for the month of May 2012.

FISCAL GROUP COMPOSITION

The Department argues that the “Living With” Factors of BEM 211¹ prevent Claimant from being eligible for Caretaker Relative MA. However, the BEM 211 “Living With” factors apply only to **FISCAL GROUP** composition.

An adult’s **fiscal group** is the adult and the adult’s spouse. BEM 211, p. 5 (Emphasis added.) However, if the spouse is determined to be not **living with** the adult, then the spouse’s income is not considered in determining group income and group assets. See BEM 211, p. 1: “Only persons living with one another can be in the same group.”

When considering the BEM 211 factors for “Living With”², it can be concluded that Claimant was not living with his spouse during March, April and May of 2012 for **fiscal group purposes only**. Therefore, only Claimant’s income, not his spouse’s income, is counted for financial eligibility.

The Department denied Claimant for the months of March and April of 2012 by improperly applying the **fiscal group** definition of “Living With” (BEM 211) to Caretaker Relative eligibility. The proper definition of “Living With” for determining Caretaker Relative eligibility is found in BEM 135, discussed above.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department improperly determined Claimant’s MA eligibility for the months of March of 2012 and April of 2012, and properly determined Claimant’s MA eligibility for the month May of 2012.

¹ Living with others means sharing a home where family members usually sleep, **except** for temporary absences. A temporarily absent person is considered in the home.

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.

Therefore, the above persons (including spouses residing in the same facility) are never considered to be living with others.

BEM 211, p. 2

² *ibid*

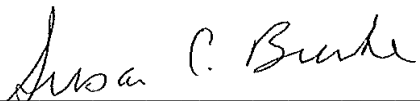
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly in part, and did not act properly in part.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED in part and REVERSED in part, for the reasons stated within the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate reprocessing of Claimant's May 1, 2012 retroactive MA application for the months of March of 2012 and April of 2012.
2. Issue a written notice to Claimant and Claimant's Authorized Hearing Representative regarding approval or denial of the application.


Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 11, 2013

Date Mailed: February 11, 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 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:

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- 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

SCB/tm

cc

