

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201247449
Issue No.: 2015
Case No.: [REDACTED]
Hearing Date: July 16, 2012
County: Monroe DHS

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 July 16, 2012 from Monroe, Michigan. Participants included the above named claimant; [REDACTED] appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager.

ISSUE

The issue is whether DHS properly denied Claimant's retroactive MA benefit request for 7/2011 based on claimant's eligibility as a caretaker on the date of application.

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 10/31/11, Claimant applied for MA benefits including retroactive MA benefits for 7/2011.
2. Claimant was the father of a son who turned 18 on [REDACTED].
3. On 11/3/11, DHS denied Claimant's MA benefits to Claimant as a caretaker of a dependent child because Claimant applied for MA benefits after the child turned 18 years old.
4. On 1/30/12, Claimant requested a hearing to dispute the denial of MA benefits for 7/2011.

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).

Clients may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105 at 2. The present case involves a DHS determination concerning Claimant's eligibility for Group 2 Caretaker (G2C) benefits. G2C policy is outlined in BEM 135.

MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. BEM 135 at 1. All eligibility factors must be met in the calendar month being tested. *Id.* Among other requirements, a caretaker relative is a person who is a parent to a dependent child. *Id.* Among other requirements, a dependent child:

- must be under age 18; or
- must be age 18 and a full-time student in a high school or in the equivalent level of vocational or technical training as defined in FIP policy in BEM 245. He must be expected to complete his educational or training program before age 19.

The present case only involves Claimant's eligibility for MA as a caretaker for 7/2011. DHS contended that Claimant is not eligible for MA benefits as a caretaker in 7/2011 because Claimant applied for MA benefits at a time when he was no longer met the caretaker eligibility requirements. Claimant's AHR contended that Claimant was eligible for 7/2011 because Claimant's son was a dependent child for at least part of the benefit month in dispute.

Looking at the above cited caretaker policy, the most relevant section states, "All eligibility factors must be met in the calendar month being tested." "Calendar month being tested" is presumed to refer to the month of eligibility; in the present case, that month is 7/2011. Claimant met the caretaker requirement in 7/2011, at least until 7/8/2011, the date Claimant's child turned 18. The issue to be determined is whether an application denial is justified when a client fails to meet eligibility for a benefit month and/or whether when the benefits are applied for is relevant to the determination.

DHS cited an email (Exhibit 1) dated 11/30/11, presumably from a MA benefit policy maker, supporting the DHS contention. The email was in direct response from an inquiry by DHS specialists who were puzzled by the failure of the DHS database to recognize Claimant as an eligible caretaker for 7/2011. The email stated that MA benefits were denied because Claimant applied for the MA benefits after the dependent child's 18th birthday.

An email is not official DHS policy; official policy is written in BAM and BEM. Further, there is no evidence to equate the anonymous writer of the email to a person with authority to make DHS policy decisions. Some respect can be given to the email as it appears to be from a person with some knowledge and authority concerning MA policy, but that respect is very limited.

Generally, when there is a need for clarification of policy, the policy should be interpreted unfavorably for the party making the policy. DHS has the authority to draft its own guidelines. When those guidelines are unclear, it is the fault of nobody but DHS, the drafter of those guidelines. If any party should bear the burden of consequence, that party is DHS, not Claimant. This general rule is supportive in giving the DHS email less evidentiary weight than DHS would contend. However, the current case can be determined by official DHS policies rather than guidelines of policy interpretation.

Claimant's AHR noted that DHS regulations recognize allowing eligibility when a person's age changes eligibility in the application month. For the Other Healthy Kids (OHK) MA category, DHS regulations state that a person who is eligible starting after the application month may reach age 1 or 19 in the processing month and that DHS is to determine if eligibility continues after the month the age limit was reached. BEM 531 at 2. OHK is a separate MA category from the category of G2C; its policies simply cannot be automatically applied to other MA categories. This was not particularly persuasive policy for the current set of circumstances.

The present case concerns a retroactive MA benefit application. Retro MA coverage is available back to the first day of the third calendar month prior to the current application for MA benefits. BEM 115 at 9. A person might be eligible for one, two or all three retro months, **even if not** currently eligible. *Id.* Note that the bold lettering is exactly how DHS regulations present this policy. This policy strongly implies that benefit decisions are based on the circumstances of the benefit month, not the application month. Accepting the implication would lead one to believe that Claimant may not have been eligible for MA benefits as a caretaker at the time of his application date, but that does not prevent Claimant from being eligible for a past month. This is very persuasive evidence to support Claimant's contention.

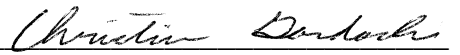
Claimant's AHR asked the testifying DHS representative whether DHS would have approved MA benefits for Claimant as a caretaker had Claimant been an ongoing MA benefit recipient. The testifying DHS representative conceded that Claimant's eligibility for MA benefits in 7/2011 would have been approved had Claimant applied for coverage prior to 7/2011. DHS failed to cite any official regulations that would justify looking at the application month's circumstances instead of the benefit month's circumstances. Based on the presented evidence, it is found that DHS regulations allow MA benefit eligibility as a caretaker during a benefit month even if an application is submitted after the client lost caretaker status. Accordingly, the denial of 7/2011 MA benefits is found to be improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's eligibility for MA benefits for 7/2011. It is ordered that DHS:

- (1) re-evaluate Claimant's eligibility for 7/2011 subject to the finding that Claimant met the G2C MA benefit category for 7/2011 MA benefit eligibility;
- (2) supplement Claimant for any MA benefits not received as a result of the improper DHS denial.

The actions taken by DHS are REVERSED.


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

Date Signed: July 20, 2012

Date Mailed: July 20, 2012

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 to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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CG/hw

cc:

