

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

IN THE MATTER OF:

[REDACTED]

Reg No: 201252761
Issue No: 2015
Case No: [REDACTED]
Hearing Date: January 15, 2013
County DHS: Alpena

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in-person hearing was held on [REDACTED]. The Claimant's Authorized Hearings Representative, [REDACTED], appeared and testified. The Department was also represented by [REDACTED] and [REDACTED].

ISSUE

Did the Department properly determine Claimant's MA-Caretaker Relative eligibility?

FINDINGS OF FACT

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

1. Claimant applied for MA on [REDACTED].
2. Claimant's application was denied on [REDACTED], because Claimant was found not disabled by the Medical Review Team.
3. Claimant was living with his biological son and mother (the child's grandmother) at the time of application.
4. Claimant's mother had adopted Claimant's son and had legal and physical custody of that child at the time of application.
5. Claimant's parental rights had been terminated at the time of application.
6. Claimant's advocate argued that Claimant was legally his biological son's brother at the time of application and could have and should have been considered potentially a caretaker relative.

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 (formerly known as the Family Independence Agency) 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 Program Reference Manual (PRM).

MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. All eligibility factors must be met in the calendar month being tested. If the month being tested is an L/H month and eligibility exists, go to BEM 546 to determine the post-eligibility patient-pay amount.

NONFINANCIAL ELGIBILITY FACTORS

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.
- 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. BEM 135.

SPECIFIED RELATIVE DEFINED

A specified relative is any of the following:

- Parent.
- Aunt or uncle.
- Niece or nephew.
- Any of the above relationships prefixed by grand, great or great great.
- Stepparent.
- Sister or brother.
- Stepsister or stepbrother.
- First cousin.
- First cousin once removed (i.e., a first cousin’s child).
- The spouse of any person above, **even** after marriage is ended by death or divorce.

The above includes relationships established by adoption.

Note: Termination of parental rights is a court order that ends a parent's rights and responsibilities to the child.

A person whose parental rights are terminated by a court is not a specified relative. The child's relationships to **other** specified relatives are not affected. BEM 135.

In the present case, Claimant's Advocate argued that Claimant as his biological son's legal brother could have and should have been considered a caretaker relative with regard to potential Medicaid eligibility. Claimant's biological son was in the legal and physical custody of his grandmother, Claimant's mother. There was no evidence presented that she was not the one providing the physical care and supervision of the child. Since she has legal and physical custody of the child, one can presume that she fulfilled those roles. Claimant's advocate testified that Claimant and the child were living in Claimant's mother's home.

In addition, Claimant's parental rights were terminated. Department policy specifically says that, "person whose parental rights are terminated by a court is not a specified relative". Claimant was ineligible to be a specified relative because his parental rights were terminated. BEM 135. Therefore, the Department's determination that Claimant did not qualify as a caretaker relative was proper and correct.

Claimant did not appear at hearing and his advocate acknowledged that they were abandoning any appeal with regard to a denial based on lack of disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was correct in the denial of Claimant's MA application, and it is ORDERED that the Department's decision is hereby **AFFIRMED**.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 01/22/2013

Date Mailed: 01/23/2013

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.

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

AM/kl

cc:

