

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201311896
Issue No.: 2012
Case No.: [REDACTED]
Hearing Date: January 10, 2013
County: Bay County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on January 10, 2013 from Lansing, Michigan. Participants on behalf of Claimant included Chris Earley (L&S Associates). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (Family Independence Manager) and [REDACTED] [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) and Retro 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 December 16, 2010, Claimant submitted an Assistance Application (DHS-1171) alleging disability and seeking MA and Retro MA back to November 16, 2010.
2. The Department obtained a medical packet and forwarded the packet to the Medical Review Team (MRT).
3. On or about February 24, 2011, the MRT denied Claimant's Retro MA for November, 2010.
4. On July 27, 2012, Claimant was found to be disabled by a Social Security Administration (SSA) Administrative Law Judge with a disability onset date of

December 20, 2010. The SSA ALJ specifically denied Claimant's request for an earlier disability onset date of November 16, 2010.

5. On or about August 29, 2012, Claimant, through his representative [REDACTED] submitted another MA application seeking Retro MA coverage back to November, 2010.
6. On November 7, 2012, the Department received Claimant's request for a hearing.

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 client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600. The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness and (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

For each hearing not resolved at a prehearing conference, the Department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. BAM 600. The DHS-3050 narrative must include **all** of the following: (1) clear statement of the case action, including all programs involved in the case action; (2) facts which led to the action; (3) policy which supported the action; (4) correct address of the AHR or, if none, the client; and (4) description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. BAM 600. The Department must send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client **and** AHR.

Department workers who attend the hearings, are instructed to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BEM 600.

During the hearing, the ALJ will follow the same rules used in circuit court to the extent these rules are practical in the case being heard. BAM 600. The ALJ must ensure that the record is complete, and may do the following: (1) take an active role in questioning witnesses and parties; (2) assist either side to be sure all the necessary information is presented on the record; (3) be more lenient than a circuit court judge in deciding what evidence may be presented; and (4) refuse to accept evidence that the ALJ believes is unduly repetitious, immaterial, irrelevant or incompetent.. BAM 600.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

The issue in the instant matter concerns the Department's decision to deny Claimant's application for Medical Assistance (MA). 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.

Here, the Social Security Administration (SSA) purportedly found that Claimant was disabled in December, 2010. Here, Claimant, through his AHR, contends that the Department recently changed their "standard practice" which would permit the Department to provide retroactive coverage for 3 (three) months based on his December, 2010 SSI approval.

Both the Department and Claimant's AHR agree that the Department has adopted a new policy interpretation regarding the approval of retro MA months when Claimant was awarded SSI. During the hearing, the Department representatives either would not or could not explain the Department's actions. As a result, the Administrative Law Judge

requested the Department obtain a written explanation for the recent change in policy interpretation and provide a copy to Claimant's AHR as well. The Department representatives agreed to do so, but never provided the document.

In the instant matter, the Department has failed to clearly communicate to this Administrative Law Judge the precise nature of the Department's actions. The department's Hearing Summary (DHS-3050) does not comply with the requirements set forth in BAM 600 as it does not contain a **clear** statement of the case action or facts which led to the action. BAM 600. Instead, the Department provided a terse response in the form of an email from MA Policy Unit. Because the email was unclear and the Department representatives were unable to explain the Department's rationale for the apparent change in policy, the Administrative Law Judge requested a more comprehensive response. Unfortunately, the Department failed to respond to this request and the hearing packet did not provide any insight regarding the relevant department action giving rise to Claimant's hearing request. The Department representatives were unable to clearly and succinctly articulate the nature of the Department's actions giving rise to the request for a hearing.

Based on the lack of documentation and the inability of the Department representatives to explain the Department action, this Administrative Law Judge is unable to make a reasoned, informed decision. Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, is unable to decide whether the Department acted in accordance with policy in determining Claimant's MA eligibility.

Therefore, the Department determination is **REVERSED**.

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

The Department shall process Claimant's retro MA application for coverage back to November, 2010.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 4, 2013

Date Mailed: February 4, 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.

2013-11896/CAP

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

CAP/cr

cc:

