

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201311979
Issue No.: 2018
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Macomb (20)

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 May 16, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Authorized Hearing Representative (AHR) from [REDACTED]). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) or "Medicaid" and Retroactive Medicaid?

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 January 30, 2012, the Social Security Administration (SSA) issued Claimant's AR a Supplemental Security Income (SSI) Notice of Award which indicated that Claimant met the medical requirements for SSI as of May 2010.
2. Claimant's AHR submitted an application for MA and Retro MA on March 6, 2012 for the month of April 2010.
3. On November 7, 2012, Claimant's AHR requested a hearing "to prompt the Wayne County Department of Human Services to add SSI entitled Medicaid to the system and to also process the Retroactive Medicaid application that was submitted 3/6/12 for the month of April 2010."

CONCLUSIONS OF LAW

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.

The Department local office has 15 (fifteen) days from receipt of hearing request to do **all** of the following: (1) log the request; (2) contact the client or authorized hearing representative; (3) obtain and submit to MAHS verification of the authorized hearing representative's prior authorization, if needed; (4) arrange a prehearing conference¹ including all appropriate staff; (5) determine the nature of the complaint; and (6) forward the request with either a DHS-18A, Hearing Request Withdrawal, or a DHS-3050 to MAHS so that MAHS receives them by the 15 (fifteenth) day.

Policy requires the Department resolve disagreements and misunderstandings quickly at the lowest possible level to avoid unnecessary hearings. BAM 600. Upon receipt of a hearing request, the Department should schedule a prehearing conference with the client or authorized hearing representative and conduct a supervisory review. BAM 600 at page 12. The client or authorized hearing representative is not required to phone or meet with any Department staff in order to have a hearing and any notice of prehearing conference must explain this. See BAM 600 page 12.

¹ The conference need not be **held** within the 15 day standard.

Upon receipt of the hearing request from the hearings coordinator, the Department's first-line supervisor reviews the disputed case action for accuracy according to policy and fact and determines if the request is timely. BAM 600 at page 12.

Department policy further discusses the importance of conducting a prehearing conference. See BAM 600 pages 12 and 13. The policy provides that the Department must assure that clients receive the services and assistance to which they are entitled. BAM 600. Concerns expressed in the hearing request should be resolved whenever possible through a conference with the client or authorized hearing representative rather than through a hearing. BAM 600.

The spokesperson for the local office at the prehearing conference may be anyone from the county director to a first-line supervisor. BAM 600. Whoever is assigned this function, however, acts on behalf of the county director. BAM 600. A DHS-1560, Prehearing Conference notice **must** be generated and mailed to the client or authorized hearing representative upon receipt of a hearing request, unless the issue in dispute pertains solely to an MRT decision. BAM 600 pp 12 & 13.

A formal prehearing conference must take place as soon as possible after the local office receives the request unless: (1) the client or authorized hearing representative chooses not to attend the prehearing conference; or (2) a conference was held prior to receipt of the hearing request, and the issue in dispute is clear, and DHS staff fully understand the positions of both the department and the AHR or, if none, the client. BAM 600 p 13. All appropriate staff (for example, first-line supervisor, child support specialist, PATH representative, FIS/ES or OIG) must be consulted before the prehearing conference and should attend, as necessary. BAM 600 p 13.

When the Department conducts a prehearing conference, the Department must do all of the following: (1) determine why the client or authorized hearing representative is disputing the DHS action; (2) review any documentation the client or authorized hearing representative has to support his allegation; (3) explain the department's position and identify and discuss the differences; (4) determine whether the dispute can be resolved locally or requires MAHS to resolve; (5) mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing. BAM 600 p 13.

Policy also provides an administrative review process. The local office manager or designee must review all hearing requests which are **not** resolved by the first-line supervisor. The purpose of the review is to assure that local office staff has done the following: (1) applied DHS policies and procedures correctly; (2) explained DHS policies and procedures to the AHR or, if none, the client; (3) explored alternatives; (4) offered appropriate referrals to the client; and considered requesting a central office policy clarification or policy exception, if appropriate. . BAM 600.

The local office manager or designee must evaluate the advisability of a hearing in relation to such factors as intent of policy, type of issue(s) raised, strength of the

department's case, and administrative alternative. BAM 600. The local office manager is accountable for the decision that a hearing request **cannot** be resolved except through formal hearing. BAM 600. The administrative review does **not** replace the hearing process. BAM 600. The hearing must be held as scheduled **unless** the department deletes the negative action **or** the client or authorized hearing representative withdraws the hearing request. 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. DHS-4772, Hearing Summary Letter, may be used for this purpose. BAM 600.

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.

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.

Claimant's request for a hearing in the instant matter concerns the Medical Assistance (MA or "Medicaid") program which 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.

Specifically, Claimant's AHR contends that the Department failed to properly process his March 6, 2012 application for MA and Retro MA back to April 2010. According to Claimant's AHR, Claimant was awarded SSI with a disability onset date of May 2010.

Claimant's AHR submits that BEM 150 provides that "ongoing MA eligibility begins the first day of the month of SSI entitlement." Claimant, through his AHR, also argues that BAM 115 indicates that "Retro MA coverage is available back to the first day of the third calendar month prior to . . . entitlement to SSI." Claimant's AHR further claims that the Department failed to respond to requests to process eligibility for April 2010. The Department, on the other hand, contends that Claimant filed the Retro Medicaid application on May 6, 2012 (See Hearing Summary). The Department further alleges that the application was denied because it was not timely filed. The Department did not include any exhibits or documentation in the hearing record. All documents contained in this hearing record were provided by Claimant's AHR.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. First, this Administrative Law Judge finds that Claimant's application was March 6, 2012 not May 6, 2012. Secondly, there is no evidence that that Department took any action to process Claimant's March 6, 2012 application. Certainly, the Department failed to include a Notice of Case Action in the record to show whether the application was approved or denied. This Administrative Law Judge finds that Claimant is entitled to, at least, a Notice of Case Action in response to the pending March 6, 2012 application. The lack of any documentation in the hearing packet also demonstrates that the Department was not compliant with the requirements of BAM 600 with regard to Claimant's request for hearing. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department must process Claimant's March 6, 2012 MA and Retro MA application. Because the Department has failed to show that it even processed Claimant's MA application, this Administrative Law Judge need not make a determination regarding the substantive issue concerning the effective date of Retro MA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not act properly when it failed to process Claimant's MA and Retro MA application dated March 6, 2012.

Accordingly, the Department's is **REVERSED**.

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

1. Initiate the processing of Claimant's March 6, 2012 application for MA and Retro MA.
2. To the extent required by policy, the Department shall provide Claimant with supplemental and/or retroactive benefits.

IT IS SO ORDERED.

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

Date Signed: May 28, 2013

Date Mailed: May 28, 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.

201311979/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/aca

cc:

