

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201318924
Issue No: 2023
Case No: [REDACTED]
Hearing Date: May 28, 2013
County: Calhoun (21)

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 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on May 28, 2013. Participants on behalf of Claimant included Claimant's attorney [REDACTED] ([REDACTED]). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Long Term Care (LTC) Eligibility Specialist).

ISSUE

Whether the Department properly denied Claimant's application for Medical Assistance (MA) or "Medicaid" benefits due to excess assets?

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 benefits.
2. The Department denied the application purportedly due to excess assets.
3. On December 5, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605).
4. On December 14, 2012, Claimant's attorney submitted a hearing request to challenge the Department's decision to deny Claimant's MA application due to excess assets.

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.

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.

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

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.

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.

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.**

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.

Claimant's request for a hearing in the instant matter clearly concerns the Medical Assistance or "Medicaid" (MA) program. The Medicaid program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers the Medicaid program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies for the MA programs are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RFT).

Assets must be considered in determining eligibility for SSI-related MA categories. BEM 400. For SSI-Related MA, the asset limit is \$2,000 for an asset group of 1 (one) and

\$3,000 for an asset group of 2 (two). All types of assets are considered for SSI-related MA categories. BEM 400.

Asset eligibility is required for SSI-related MA categories. BEM 400. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400.

Assets are defined as cash, any other personal property and real property. BEM 400. "Cash" includes the following types of assets: (1) money/currency; (2) uncashed checks, drafts and warrants; (3) **checking and draft accounts**; (4) **savings and share accounts**; (5) money market accounts; (6) LTC patient trust fund and all other money held by the facility for the patient (i.e., patient has prepaid in advance for the nursing home stay); (7) money held by others (i.e., Sally does not have a bank account. She puts money in her mother's checking account, but it is not a joint account); (8) time deposits (a time deposit is a contract between a person and a financial institution whereby the person agrees to leave funds on deposit for a specified period in return for a specified interest rate. Common time deposits are certificates of deposit (CDs) and savings certificates. BEM 400.

Countable assets cannot exceed the applicable asset limit. BEM 400. An asset is countable if it meets the availability tests and is **not** excluded. BEM 400. An asset must be available to be countable. BEM 400. "Available" means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400.

In the instant matter, the Department has failed to fully comply with the requirements of BAM 600. The Department's hearing summary explanation of action taken provides the following: "Client applied for Medicaid on 10/30/2012. Client is over the \$2,000.00 asset limit for Medicaid." The sole exhibit provided by the Department in the hearing packet was an account statement from [REDACTED] ([REDACTED]) which indicated that Claimant had a savings account balance of \$11,199.49 for the period of August 1, 2012 through August 31, 2012. The Department failed to include a copy of the application and also did not include the Notice of Case Action (DHS-1605) which would provide the notice date and reasons for denial of Claimant's MA application. Because the Department has failed to comply with BAM 600, this Administrative Law Judge does not have enough evidence to make a reasoned, informed decision regarding the issue at hand.

The Department representative who attended the hearing testified that Claimant had a savings account that exceeded the \$2,000.00 asset limit for SSI-related MA eligibility. The Department also included the August 2012 MCCU account statement which confirmed that Claimant's savings account exceeded the limit during that month.

During the hearing, Claimant's attorney argued that Claimant was eligible for MA and did not have excess assets. In support of this proposition, Claimant's attorney argued that Claimant applied for MA in late September 2012 rather than on October 30, 2012 as stated by the Department. Claimant allegedly had written a check that did not clear until the end of October 2012. In support, Claimant provided the following four exhibits which were admitted into evidence. First, Claimant included a November 14, 2012 letter from her attorney to Claimant's caseworker which confirmed a November 13, 2012

telephone conversation regarding a current statement from Claimant's [REDACTED] account. Claimant also included an account statement from [REDACTED] which indicated Claimant had a savings balance of \$50.52 for the period of October 1, 2012 through October 31, 2012. The record also contained an account history report which indicated that Claimant's checking account fell below \$2,000.00 on October 19, 2012. Finally, Claimant offered an \$8,000.00 receipt dated October 1, 2012 from [REDACTED] for Claimant.

The crucial issue in this matter concerns whether the Department properly determined whether Claimant had excess assets at the time she applied for Medicaid. BEM 400 indicates that asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit **at least one day during the month being tested**. Here, the parties do not even agree as to the date of application. Claimant's attorney indicates that the application was received in late September 2012 while the Department worker indicates that the application was received in late October 2012. Had the Department included the assistance application in the hearing packet, this matter would be settled. There is no way for the Administrative Law Judge to ascertain the month being tested when the Department has failed to include the application in the hearing packet.

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, including the account statements provided by both parties. Based on the lack of sufficient documentation in this record, this Administrative Law Judge is unable to make a reasoned, informed decision regarding the Department's decision to deny Claimant's Medicaid application due to excess assets.

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 with regard to Claimant's Medicaid eligibility.

Therefore, the Department's determinations regarding Claimant's Medicaid eligibility is **REVERSED**.

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

- Recertify and reprocess Claimant's Medicaid application.
- Redetermine Claimant's eligibility for Medicaid, including but not limited to a review of her eligibility under the asset test.
- To the extent required by policy, provide Claimant with retroactive and/or supplemental 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 29, 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.

201318924/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:

