

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201327971
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Bay County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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, an in-person hearing was held at Bay County DHS in Essexville, MI. Participants on behalf of Claimant included Claimant. Participants on behalf of the department included [REDACTED], FIM.

ISSUE

Did the Department of Human Services (DHS) properly process Claimant's freedom to work MA case at review?

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 was previously approved for MA based on disability. The department scheduled Claimant's case for a redetermination in February, 2013.
2. There is no retro MA-P issue herein.
3. The department incorrectly completed a DHS 49 without indicating that the case was an "FTW" case. The department indicated a new application date in error. On January 25, 2013 MRT denied based on a new application.
4. On January 30, 2013, the DHS issued notice. The department failed to present evidence of the negative action on the record; presumably it issued a notice of closure based on the denial of a new MA-P application.

5. On February 5, 2013, Claimant filed a timely hearing request. The department reinstated the action pending the outcome of the hearing.
6. On April 4, 2013, the State Hearing Review Team (SHRT) denied Claimant based upon a new application.
7. Claimant has permanent disabilities which she was born with including spinal bifida, bladder, and bowel issues. Claimant recently had her left foot amputated.
8. Claimant is employed full-time but meets the FTW income eligibility requirements.

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 (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance Claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

As noted in the Findings of Facts, Claimant's case is a special FTW case. The policy for freedom to work is found in BAM Item 174. It should be noted that this item only requires an accounting of income based upon "net income". SHRT incorrectly makes reference to the gross income. However, SHRT did not assess Claimant's status based on freedom to work but instead assessed Claimant's status on SGA which was clearly incorrect. 42 USC 1382h; 42 USC 1619; BAM Item 174.

BAM Item 174 requires the department at review to forward the case to MRT and to clearly indicate "FTW" on the DHS 49a. The department failed to do so in this case.

The undersigned administrative law judge has reviewed the evidence in this file alone with the federal and state laws. Also reviewed was the requirements found in 42 USC 1382h as implemented in BAM Item 174. Claimant meets the requirements under freedom to work and thus, is entitled to continuing eligibility. 42 USC 1382h; 42 USC 1396; 2003 PA 32; Bam 174.

It is also noted that Claimant's physical state will continue to be disabled as she has had an amputation and has had spinal bifida since birth. Claimant's medical state will not improve and thus, meets the freedom to work requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's determination in this matter is **REVERSED**.

The department is ORDERED to keep Claimant's case open and continuing as it was previously reinstated pending the outcome of the hearing. Claimant meets the eligibility of requirements for continuing Medicaid and the department is ORDERED to continue Claimant's Medicaid as previously set up on her behalf pursuant to the freedom to work and case Claimant had open under BAM 174.

The department is ORDERED to review this case in two years from the date of this Decision and Order.

/s/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/17/13

Date Mailed: 7/18/13

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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing 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

JGS/hj

cc:

