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

IN THE MATTER OF:

████████ ████

Reg. No.:   201333424
Issue No.:   2018
Case No.:   ████████
Hearing Date: August 15, 2013
County: Jackson

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 August 15, 2013 from Lansing, Michigan. Participants on behalf of Claimant included ████████ (Claimant's Authorized Hearing Representative (AHR) with ████████.,). Participants on behalf of Department of Human Services (Department) included ████ ████ (Family Independence Specialist) and ████████ (Family Independence Manager).

ISSUE

Did the Department properly process Claimant's July 21, 2010 application seeking 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. Claimant signed an authorization that permitted ████████. to represent him for purposes of establishing Medicaid.

2. On or about July 21, 2010, ████████ submitted an application on behalf of Claimant seeking Medicaid and Retro Medicaid coverage for July 2010.

3. On February 13, 2013, ████████ submitted a request for hearing because the Department failed to process the July 2010 application for Medicaid and Retro Medicaid.

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 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, Claimant requested a hearing regarding Medicaid and Retro Medicaid benefits. Specifically, Claimant, through his AHR, contends that the Department failed to process his July 21, 2010 application. Claimant's AHR argues that the Department was aware that Claimant had representation but failed to provide the AHR with a decision regarding the application. Claimant's AHR further contends that the Department provided the AHR with a verification checklist on May 19, 2011 and that all verifications were provided to the Department by May 27, 2011. The AHR also alleges that the application was re-registered in September 2012, but an eligibility notice had not been issued. The Department, in response to the request for hearing, prepared a hearing summary (DHS-3050) which indicated the following: "1) DHS received Request for Hearing 02/11/2013 (pg #1). 2) DHS-1605 mailed to customer requested MA approved 07/2010 (pg #2). We respectfully request a Hearing not be scheduled at this time." The hearing summary cites BAM 115. As exhibits, the Department included the request for hearing (indicated above), a partial Bridges screen shot of page one of a DHS-1605 regarding Claimant, however, the date is not contained on this page, and a Bridges Eligibility Summary which indicated Claimant had MA-G2C from June 2012 through April 1, 2013. No other documents were contained in the packet.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department 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. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

> The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

> The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

> The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

In the instant matter, the Department failed to include any documents to allow the Administrative Law Judge to determine whether the Department properly processed Claimant's July 2010 application and properly communicated with Claimant's AHR. This Administrative Law Judge finds that the Department failed to mail Claimant's AHR a copy of the DHS-1605 regarding the outcome of the July 21, 2010 application for Medicaid and Retro Medicaid. During the hearing, the Department representative was unable to answer the ALJ's questions and continued to indicate that he would need to research the issue. Without additional documentation, this Administrative Law Judge is unable to evaluate whether the Department actually processed Claimant's Medicaid/Retro Medicaid application and then properly communicated with Claimant's AHR. The Department failed to include a Notice of Case Action, which would indicate the date notice would have been mailed to Claimant. Without this evidence, this Administrative Law Judge cannot even determine whether Claimant's AHR could reasonably request a hearing in 2013 based on a 2010 application. This Administrative Law Judge finds that Claimant's AHR did not receive the Notice of Case Action, if one was even prepared. 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, finds that the Department did not act properly when it failed to properly process Claimant's July 21, 2010 application for Medicaid and Retro Medicaid.

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

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

- Initiate a reprocess and recertification of Claimant's Medicaid and Retro Medicaid application dated July 21, 2010.

IT IS SO ORDERED.

/s/_____

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

Date Signed: August 19, 2013

Date Mailed: August 20, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc: