

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-57067
Issue No.: 2021
Case No.: [REDACTED]
Hearing Date: August 22, 2013
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 telephone hearing was held on August 22, 2013, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly deny Claimant's December 8, 2011, MA application with request for retroactive coverage to September 2011?

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 8, 2011, Claimant applied for MA with retroactive coverage to September 2011.
2. On December 14, 2011, the Department sent Claimant a Notice of Case Action denying the application.
3. At a hearing on May 13, 2013, the Department acknowledged that it had not provided a copy of the December 14, 2011, Notice of Case Action to the AHR, who was Claimant's authorized representative. The Department agreed to provide a

copy of the notice to the AHR and stipulated that an appeal of the denial would be timely.

4. On June 26, 2013, the AHR filed a request for hearing disputing the December 14, 2011 denial.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services 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.

Additionally, as a preliminary matter, the issue of whether the AHR's request for hearing was timely was addressed. The AHR requested a hearing on June 26, 2013, to challenge the December 14, 2011, Notice of Case Action denying Claimant's MA application. The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (February 2013), p. 4. While the AHR's hearing request was filed more than 90 days after the December 14, 2011, Notice of Case Action, the Department acknowledged that in a May 13, 2013, hearing, it admitted it had erred in failing to forward a copy of the December 14, 2011, Notice of Case Action to the AHR and agreed to do so. The Department also stipulated that it would not challenge the AHR's appeal of the December 14, 2011, Notice of Case Action as untimely. Under these circumstances, the AHR's request for hearing is not untimely and the merits of the AHR's argument are considered.

In its December 14, 2011, Notice of Case Action, the Department denied Claimant's MA application because Claimant had failed to cooperate with the Department in identifying third party resources. However, in her application, Claimant identified that she had health insurance coverage [REDACTED]. The Department presented no evidence that there was an issue concerning other resources or that it had asked for verification of other resources. Therefore, the Department did not act in accordance with Department policy to the extent that it denied Claimant's MA application for failure to verify third party resources.

At the hearing, the Department testified that Claimant's application was also denied because of excess assets. However, the AHR argued that asset eligibility is not a condition for certain MA programs and the Department was required to consider all MA categories before denying Claimant's MA application. Specifically, the AHR cited to

Claimant's eligibility under BEM 125 (Healthy Kids for Pregnant Women) and BEM 126 (Group 2 Pregnant Women).

Healthy Kids for pregnant women (HKP) program is a FIP-related Group 1 MA category and provides MA coverage to a woman while she is pregnant, the month her pregnancy ends and during the two calendar months following the month her pregnancy ended regardless of the reason. BEM 125 (October 2010), p. 1. The Group 2 pregnant women program is defined in BEM 126 as a FIP-related Group 2 MA category that provides MA coverage to a woman who is eligible for, and receiving, MA when her pregnancy ends. BEM 126 (October 2010), p. 1. The woman may continue receiving MA benefits for the two calendar months following the month her pregnancy ended if she meets the eligibility requirements. BEM 126, pp. 1-2. Neither the HKP or Group 2 Pregnant Women program requires an asset test. BEM 125, p. 2; BEM 126, p. 1; BEM 400 (October 2011), p. 1.

In this case, Claimant identified herself as pregnant (or pregnant in the last three months) in her application, although she did not provide her due date/pregnancy end date. The AHR testified that she gave birth on September 13, 2011. A client is entitled to coverage under the most beneficial MA category. BEM 105 (October 2012), p. 2. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105, p. 2. Thus, to the extent the Department denied Claimant's application for MA for excess assets, it did not act in accordance with Department policy because it did not consider Claimant's eligibility for MA coverage under categories that did not require asset eligibility.

Furthermore, the Department testified that it based its excess asset calculation on the value of Claimant's vehicle with the lower market value. However, vehicle values are not considered in determining asset eligibility for MA coverage under the Group 2 Caretaker Relative (G2C) program. BEM 400, pp. 1, 28-29. There was evidence at the hearing that Claimant had minor children in the home, including the child born [REDACTED]. Therefore, Claimant's MA eligibility under the G2C program would not take into consideration the value of her vehicles.

Also, in considering asset value for SSI-related MA, the Department must consider the equity value of an owned vehicle, which is the fair market value minus the amount legally owed, and, if there are multiple vehicles owned by the asset group, exclude the one with the highest equity value. BEM 400, p. 28. Claimant's application indicates that Claimant owed \$24,000 on one vehicle. The Department's evidence shows that it did not take into consideration the equity value of that vehicle and exclude the vehicle with the highest equity value. Therefore, the Department did not satisfy its burden of showing that it properly calculated the value of Claimant's vehicles for determining asset eligibility under SSI-related MA.

Finally, an issue was presented at the hearing concerning Claimant's MA eligibility because she was not a US citizen. The AHR acknowledged that Claimant was not a US citizen and had not resided in the US for five years. However, citizenship/alien

status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors, including residency. BEM 225 (October 2011). Therefore, if Claimant can establish MA eligibility under any of the MA categories, her coverage is limited to ESO.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act in accordance with Department policy when it denied Claimant's MA application.

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:

1. Reregister Claimant's December 8, 2011, MA application and application for retroactive MA coverage to September 2011;
2. Begin reprocessing the application in accordance with Department policy and consistent with this Hearing Decision;
3. Provide MA coverage to Claimant that she is eligible to receive, if any, from September 2011, ongoing; and
4. Notify Claimant and the AHR of its decision in writing in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 27, 2013

Date Mailed: August 27, 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

ACE/pf

cc:

