

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P. O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax (517) 373-4147

IN THE MATTER OF:

██████████

Docket No. 2013-67364 BCC
Case No ██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's sister-in-law, appeared on Appellant's behalf. Appellant also appeared but did not testify.

██████████, Certified Breast Cancer and Oncology Nurse, and Senior Nurse Consultant for the Breast and Cervical Cancer Prevention and Treatment Program, represented the Department of Community Health (Department).

ISSUE

Did the Department properly terminate the Appellant from the Breast and Cervical Cancer Control Program (BCCCP) and therefore her Medicaid coverage through BCCCP?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence on the whole record, I find, as material fact:

1. On ██████████, the federal Medicaid BCCCP Medicaid Treatment Act became effective. (Exhibit A, p 1)
2. In ██████████, Appellant was diagnosed with breast cancer. (Exhibit A, p 1). Appellant's diagnosis made her eligible for the BCCCP and as a result Appellant became eligible for Medicaid and was enrolled in ██████████. (Exhibit A, p 3; Testimony)
3. Clients enrolled in the BCCCP Medicaid treatment program are eligible to receive Medicaid coverage as long as they meet the program's eligibility criteria and are receiving treatment for their breast or cervical cancer. (Exhibit A, Appendix A).

4. The BCCCP Medicaid eligibility criteria state that women who are enrolled in a Managed Care Program, Health Maintenance Organization or Medicare Part B are ineligible for the program. (Exhibit A, Appendix A).
5. Appellant became eligible for Medicare Part B on [REDACTED] (Exhibit A, p 1; Testimony).
6. On [REDACTED], the BCCCP notified Appellant that her benefits would be terminated effective [REDACTED] because she was eligible for Medicare Part B. (Exhibit A, Appendix B).
7. On [REDACTED], the Michigan Administrative Hearing System received Appellant's request for hearing. Appellant asked to stay in the BCCCP. (Exhibit 1).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program. The Department implements a Breast and Cervical Cancer Control Program (BCCCP). The Michigan Medicaid Provider Manual (MPM) outlines the eligibility criteria and services covered for the BCCCP:

2.1 BREAST AND CERVICAL CANCER CONTROL PROGRAM

2.1.A. ELIGIBLE BENEFICIARIES

The Breast and Cervical Cancer Control Program (BCCCP) covers uninsured low-income women of all ages, especially but not limited to, women aged 40-64. Certain income restrictions do apply.

- Insured women may apply if certain insurance, age, and income requirements are met.
- Women who are enrolled in a managed care program, health maintenance organization (HMO) or have Medicare Part B are not eligible. (Emphasis added).

2.1.B. COVERED SERVICES

Covered services include:

- Clinical breast exams
- Pap smears
- Pelvic exams
- Screening mammogram, and

- Appropriate referral to community providers for follow up of abnormalities.

Breast biopsy, colposcopy-directed services, colposcopy service, diagnostic mammograms, and loop electrosurgical excision procedure (LEEP) may be provided based upon medical needs, financial and insurance status, and availability of federal grant funds or Michigan tobacco tax dollars.

*MPM, Special Programs,
January 1, 2013, page 2.*

The Centers for Medicare and Medicaid provide guidance about the BCCCP as follows:

The Breast and Cervical Cancer Prevention and Treatment Act of 2000

On October 24, 2000, the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106-354) was signed into law. This Act, which has an effective date of October 1, 2000, gives states the option to provide medical assistance through Medicaid to eligible women who were screened through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and found to have breast or cervical cancer, including pre-cancerous conditions.

Specifically, Public Law 106–354 of the 106th Congress provides:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Breast and Cervical Cancer Prevention and Treatment Act of 2000”.

SEC. 2. OPTIONAL MEDICAID COVERAGE OF CERTAIN BREAST OR CERVICAL CANCER PATIENTS.

A. COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.

(1) IN GENERAL. —Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) in subclause (XVI), by striking “or” at the end;

(B) in subclause (XVII), by adding “or” at the end; and

(C) by adding at the end the following:

(XVIII) who are described in subsection (aa)

(relating to certain breast or cervical cancer patients).

(2) GROUP DESCRIBED. —Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following:

(aa) Individuals described in this subsection are individuals who—

- (1) are not described in subsection (a)(10)(A)(i);
- (2) have not attained age 65;
- (3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) *and need treatment for breast or cervical cancer*; and
- (4) are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)). (Italics added).

Public Law 106–354 also specified that eligibility for Medicaid was limited to the period of time an individual was receiving treatment for cervical cancer:

(3) LIMITATION ON BENEFITS -

Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (G)—

(A) by striking “and (XIII)” and inserting “(XIII)”; and

(B) by inserting “, and (XIV) the medical assistance made available to an individual described in subsection (aa) who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be *limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer*” before the semicolon. (Italics added).

The Department representative testified that the Breast and Cervical Cancer Control Program does not cover persons covered under Medicare Part B and that as soon as the Program became aware that Appellant was eligible for Medicare Part B, she was terminated from the program.

Appellant’s sister-in-law testified that she understood that Appellant was no longer eligible for the BCCCP because she was now enrolled in Medicare. Appellant’s sister-

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in-law indicated that Appellant has applied for Medicaid on her own, but it has not been approved yet. Appellant's sister-in-law inquired as to what they could do to cover the cost of Appellant's medications through Medicare while waiting for Medicaid to be approved. The Department representative indicated that Appellant could apply for a supplemental Medicare policy, which would help to cover the 20% deductible applicable through Medicare.

Applying the facts of the case to the law, it was proper for the Department to terminate Appellant from the Breast and Cervical Cancer Control Program. Appellant became eligible for Medicare Part B on [REDACTED] and, at that time, became ineligible for the BCCCP.

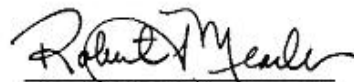
The Department submitted sufficient credible evidence that it terminated Appellant's BCCCP enrollment (with the consequential end in Medicaid coverage) in accordance with federal law and Department policy because the Appellant became eligible for Medicare Part B. This Administrative Law Judge is also bound by federal law and Department policy. The Michigan Administrative Hearing System has no equitable jurisdiction and cannot order the Department to provide programs and services, including Medicaid, to an individual who is not eligible for those services.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's eligibility for BCCCP and Medicaid.

IT IS THEREFORE ORDERED that

The Department's decision is AFFIRMED.



Robert J. Meade

Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Signed: November 7, 2013

Date Mailed: November 7, 2013

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant 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 of the rehearing decision.