

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

IN THE MATTER OF:



Reg. No.: 2011-29294
Issue No.: 2001
Case No.:
Hearing Date: December 18, 2013
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 18, 2013, from Lansing, Michigan. Participants on behalf of Claimant included and her Authorized Hearing Representative (AHR) . Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist (ES), and Assistance Payments Supervisor (APS), .

ISSUE

Did the Department properly fail to process Claimant's application for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> Child Development and Care (CDC)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Direct Support Services (DSS)? |
| <input type="checkbox"/> Adult Medical Assistance (AMP)? | <input type="checkbox"/> State SSI Payments (SSP)? |

Did the Department properly close to process Claimant's daughter's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> Child Development and Care (CDC)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Direct Support Services (DSS)? |
| <input type="checkbox"/> Adult Medical Assistance (AMP)? | <input type="checkbox"/> State SSI Payments (SSP)? |

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 applied for: MA benefits.
2. On August 12, 2010, the Department denied Claimant's application because she was not blind, disabled, did not meet age requirements, was not pregnant and was not a caretaker of a minor child.
3. On August 12, 2010, the Department sent Claimant its decision, but did not send the decision to the Claimant's AHR.
4. On February 11, 2011, Claimant filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the

Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

PROCEDURAL HISTORY: The hearing was originally requested on February 11, 2011. On April 20, 2011, the Department received the Claimant's signed hearing request withdrawal form. That form was not signed by the Claimant's AHR. On November 22, 2013, the Claimant's AHR submitted a request to add the hearing request back into the hearing rotation. The hearing was then scheduled for December 18, 2013 and commenced as scheduled. Though the hearing was clearly not requested within 90 days of the Department notifying the Claimant of its decision, the hearing is not dismissed due to an untimely hearing request, as the Claimant's AHR was never sent a copy of the DHS-1605, Notice of Case Action.

During the hearing, the Claimant's AHR testified that she also applied for retroactive MA for June of 2010. The Claimant's AHR testified that in June of 2010, the Claimant's [REDACTED] was [REDACTED] and [REDACTED]. In the month of June the Claimant's [REDACTED] would have been considered a dependent [REDACTED] under the definition of care taker relative. The Claimant's child's MA stopped in June and the Claimant's AHR testified that no exparte review was conducted for the child's MA for eligibility for 18-21 MA. (The Claimant did mark on the application that her [REDACTED] was active for MA at the time the Claimant submitted her application).

A request for hearing must be in writing and signed by the Claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (2013), p. 5, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

The request for hearing the closure for the Claimant's daughter's MA is hereby address and not found to be untimely, as the Department could not testify with any certainty that any DHS-1605, Notice of Case Action was ever sent to the Claimant, or the Claimant's AHR regarding the closure of the Claimant's daughter's MA case.

Additionally, Bridges Eligibility Manual (BEM) 105 (2013) p. 1, provides that MA is comprised of several eligibility categories. Claimants may be eligible for MA if the Claimant is blind, disabled, over 65 or under 21, pregnant or a caretaker of minor children. The uncontested fact in this case is that the Claimant was the care taker of a minor child in June of 2010. As such, the evidence is insufficient to establish that when the Department denied the Claimant's application for MA due to no categorical eligibility, the Department was acting in accordance with its policy.

BEM 105 p. 5, provides that an *ex parte* review is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. When possible, an *ex parte* review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories. In this case, there is no evidence that any *ex parte* review ever occurred before the Claimant's [REDACTED] MA was terminated. Therefore, the evidence is insufficient to establish that the Department was acting in accordance with its policy when taking action to close the Claimant's [REDACTED] MA case.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the Claimant's [REDACTED] MA case without an *ex parte* review and when it failed to address the Claimant's eligibility for MA as a care taker relative for June of 2010.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Re-determine the Claimant's eligibility for retroactive MA for June of 2010 as a caretaker relative, and
2. Conduct an *ex parte* review of eligibility for the Claimant's [REDACTED] MA back to the date of the closure of that case, and

3. Issue the Claimant any supplement that she may thereafter be due.

/s/

Susanne E. Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/14/14

Date Mailed: 1/14/14

NOTICE OF APPEAL: 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.

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).

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

2011-29294/SEH

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

SEH/tb

cc:

