

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-39492
Issue No(s): 2002
Case No.: [REDACTED]
Hearing Date: February 12, 2014
County: Genesee-02

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

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 February 12, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's Designated Hearing Representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) benefits?

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 was receiving MA in March 2011, Case No. [REDACTED] and that case was closed effective June 1, 2011 because Claimant failed to timely and properly respond to a Verification Checklist that was due June 6, 2011.
2. On October 11, 2011, [REDACTED] submitted an application for MA, seeking retroactive coverage to July 2011, by leaving it with Genesee County's " [REDACTED] worker at [REDACTED]. See Exhibit A.
3. The Department has no record of receiving the October 11, 2011 application. This application will be referred to herein as the "lost application."
4. On December 29, 2011, Claimant applied again through [REDACTED] seeking retroactive coverage beginning September 2011.

5. On March 12, 2012 Claimant's MA was approved in Case No . [REDACTED] (the instant case).
6. [REDACTED] attempted to prompt action by the Department on the lost application through a number of letters that were submitted beginning December 2011.
7. [REDACTED] submitted a hearing request on March 25, 2013 on the lost application.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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 Claimant's Designated Hearing Representative testified that they submitted the lost application on October 11, 2011. The Department has no record of it. The Claimant submitted a cover sheet (Exhibit A, Page 1) which was stamped "DHS Oct 19 2011 [REDACTED]" and the testimony supports a finding that it was submitted. That document is a list of names (with all but the Claimant's name redacted) for whom applications for MA were submitted through the [REDACTED] worker.

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 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 NW 2d 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.

Department policy states:

Date of Application All Programs

Faxed and Paper Applications

The date of application is the date the local office receives the required minimum information on an application or the filing form. If the application or filing form is faxed, the transmission date of the fax is the date of application. Record the date of application on the application or filing form. The date of application does **not** change for FIP, SDA, MA, CDC or AMP when the application is transferred to another local office. BAM 110.

Response to Applications

All Programs

An application or filing form, with the minimum information, must be registered on Bridges **unless** the client is already active for that program(s); see REGISTERING APPLICATIONS in this item. If there is no record on Bridges, the system assigns individual ID number(s) and an application number.

Note: A person may withdraw an application at any time before it is disposed on Bridges; see WITHDRAWN APPLICATION in this item. BAM 110.

In this case, the Claimant's representative testified that the application for retroactive benefits was submitted to the Department through the MARA worker on October 11, 2011. Supporting documentation (See Exhibit A) was provided in the form of the stamped cover sheet, a transmittal letter dated October 27, 2011 (page 2), Facility Admission Notice dated October 11, 2011 (page 3), and several other documents created within the time frame at issue here. Therefore, the undersigned is persuaded that the application was submitted.

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

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. Process Claimant's October 11, 2011 MA/Retro MA application.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 13, 2014

Date Mailed: February 13, 2014

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

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

DTJ/las

cc:

