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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-24560
Issue No(s).: 2007
Case No.: [redacted]
Hearing Date: April 1, 2014
County: Macomb 20

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 three-way telephone hearing was held on April 1, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's Designated Hearing Representative, [redacted], [redacted] of [redacted]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted]

ISSUE

Did the Department properly process 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 a recipient of MA-Plan First health coverage in October 2010.

2. Through L & S Associates (L&S herein), Claimant completed an application for benefits on October 7, 2010, which [redacted] submitted to the Department on January 27, 2011.

3. The Department did not process the application [redacted] submitted.

4. On May 11, 2011, [redacted] requested a hearing "to compel the Department to register and process the January 27, 2011 application for Medicaid with Retroactive coverage back through October 2010."

5. On January 4, 2013 the Department prepared a Hearing Summary.

6. On February 4, 2014, the Michigan Administrative Hearing System received the hearing packet from the Department.

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.

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 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 did not submit any evidence that it even processed the [redacted] application.

In an unpublished opinion from the Michigan Court of Appeals, *Smelser v Dept*, Docket 312802 (2/27/14) http://www.michbar.org/opinions/appeals/2014/022714/56557.pdf the Court of Appeals considered the timeliness of Department action in a Medicaid appeal. In that case, the Appellant requested a hearing on December 15, 2010, protesting a December 9, 2010 determination that was adverse to the Appellant. The Department reportedly received the hearing request on December 27, 2010. A hearing was scheduled for, and held on, March 31, 2011. The hearing referee issued a decision on May 19, 2011, finding in favor of the Appellant. The Department then requested reconsideration on June 14, 2011. It sent notice to the Appellant's former mailing address, even though Claimant was in a nursing home at that point. It did not send notice to the Appellant's attorney who had represented her throughout the prior proceedings. On September 15, 2011, a different referee granted the request for reconsideration, but the Department never notified the Appellant or her attorney that reconsideration had been granted.

> "BAM 600 (January 1, 2011), Granting A Rehearing/Reconsideration, p 34, mandated that when a reconsideration request was granted, DHS had to 'send written notice of the decision to all parties to the original hearing.' Four months later, on January 12, 2012, which was more than one year after [Appellant] filed her request for a fair hearing, a reconsideration ruling vacating the original decision was dropped on an unsuspecting [Appellant] and [her attorney]. The referee, the third one involved in the case, found that DHS had established that the transfer to the trust constituted divestment subject to penalty, given that Exception B trusts require a person to be under 65 years old at the time of transfer and [Appellant] was over 65."
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> "Michigan's Social Welfare Act, MCL 400.1 *et seq*., provides for the promulgation of rules by DHS's director, pursuant to the Administrative Procedures Act (APA), MCL 24.201 *et seq*., governing the conduct of Medicaid-related hearings. MCL 400.9(1). These rules must 'provide

adequate procedure for a fair hearing of appeals and complaints, when requested in writing by the state department or by an applicant for or recipient of, or former recipient of, assistance or service, financed in whole or in part by state or federal funds.' *Id.* As indicated above, BAM 600 (January 1, 2011), Standard of Promptness, p 5, provided that '[f]inal action on hearing requests, including implementation of the Decision and Order . . ., must be completed within 90 days" of "the date the hearing request was first received by . . . DHS[.]' As also indicated earlier, BAM 600 (January 1, 2011), Granting A Rehearing/Reconsideration, p 34, allowed for the granting of 'a rehearing/reconsideration request if . . . [t]he information in the request justifie[d] it; **and** [t]here [was] time to rehear/reconsider the case and implement the resulting decision within the standard of promptness.' (Emphasis in original.) Michigan Administrative Code, R 400.917(3), which controls administrative hearing decisions in Medicaid cases, provides that '[a] decision shall be issued within 90 days of the request for a hearing, unless otherwise provided by governing state or federal law.' The APA indicates that '[a] final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record[.]' MCL 24.285.

"The rule that can be extracted from the maze of authorities referenced above, as best we can ascertain, is that a hearing referee must render a decision, on an original request for a hearing or on reconsideration, generally within 90 days of the original request or within 90 days of when the request was received by DHS, or at least within a reasonable period. Here, the January 12, 2012, reconsideration decision was not made within the 90-day window, and we also hold that the decision was not entered within a reasonable period of time, given that it was more than a year after Smelser requested a hearing and no reason or explanation was provided for the delay. The question then becomes determining the repercussions of the violation, where none of the authorities setting a timeframe for decision expressly provide for any sanction or penalty."

* * *

"Here, the time restrictions for a final decision were not only violated, there was egregious noncompliance, where [Appellant] was not provided a final decision until more than one year after her hearing request was made, and no excuse for the delay was provided. This alone is not sufficient to distinguish our case from *[Dep't of Consumer & Indus Servs v Greenberg, 231 Mich App 466; 586 NW2d 560 (1998])*and [*Dep't of Community Health v Anderson*, 299 Mich App 591, 593-594; 830 NW2d 814 (2013)]. But when the extensive and inexcusable delay is coupled with the fact that the original hearing decision itself contained language that absolutely precluded reconsideration given the expired 90-day period and the fact that [Appellant] was not afforded notice of both the reconsideration request and grant, we are compelled to conclude that manifest error occurred when the reconsideration ruling was issued in January 2012. 'Due process requires fundamental fairness[.]' *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). Given that DHS commenced reconsideration

> proceedings contrary to state and federal timeframes *and* the original hearing decision and that DHS failed to provide notice of the reconsideration request and the grant of reconsideration, we conclude that DHS effectively precluded itself or was equitably estopped from obtaining a decision on reconsideration; the original hearing decision must stand." *Smelser* at 7-9.

Following the reasoning from *Smelser*, the delay in providing Claimant with a hearing is inexcusable. There was egregious noncompliance with Claimant's due process right to fundamental fairness. The Department should have processed the [redacted] application within a reasonable time after it was submitted. It should have processed the hearing request within a reasonable time after it 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 did not process the [redacted] application for MA.

DECISION AND ORDER

Accordingly, the Department's decision regarding Claimant's MA 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. Reregister Claimant's January 27, 2011, MA application;

2. Begin reprocessing the application to determine if all other non-medical criteria, are satisfied and notify Claimant of its determination; and

3. Provide Claimant with MA coverage if she is eligible to receive from October 2010 ongoing.

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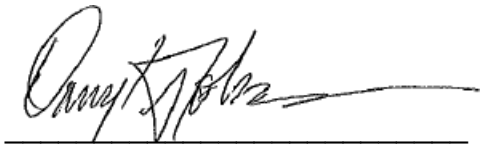

Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 3, 2014

Date Mailed: April 3, 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: [redacted]