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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-011841
Issue No.: 2001
Case No.: [redacted]
Hearing Date: December 17, 2014
County: Macomb-District 20

ADMINISTRATIVE LAW JUDGE: Darryl 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 December 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [redacted] of [redacted]. Participants on behalf of the Department of Human Services (Department) included Hearings Facilitator [redacted].

ISSUE

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA)?

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's agent applied for retroactive Medicaid on March 27, 2014.

2. Because no determination had been made, the agent requested a hearing on September 11, 2014.

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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family

Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Per BEM 150, p 1 (1/1/14), "Ongoing MA eligibility begins the first day of the month of SSI entitlement. Some clients also qualify for retroactive (retro) MA coverage for up to three calendar months prior to SSI entitlement; see BAM 115." Per BAM 115 p 11 (7/1/14),

> "Retro MA coverage is available back to the first day of the third calendar month prior to:
> - The current application for FIP and MA applicants and persons applying to be added to the group.
> - The most recent application (not renewal) for FIP and MA recipients.
> - For SSI, entitlement to SSI."

If Claimant otherwise meets the eligibility criteria, she was entitled to retroactive MA coverage back to the first day of the third calendar month prior to the current application for MA, and the first day of the third calendar month prior to her entitlement to SSI.

By the time this matter came to hearing, the Department's witness testified that the application had been approved and that Claimant had coverage as of December 2013. While that might be true, the evidence is not sufficient to show that the Department properly and timely determined whether Claimant was eligible.

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."

* * *

"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.

The facts here are certainly not as egregious as the facts in *Smelser*. But, the Department should have processed the [redacted] application 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 timely process the [redacted] application for MA.

DECISION AND ORDER

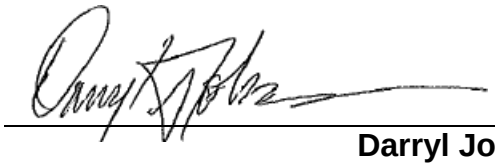
Accordingly, the Department's decision regarding Claimant's MA is **REVERSED**.

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 March 27, 2014, 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 December 2013 ongoing.



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

Date Signed: **12/22/2014**

Date Mailed: **12/22/2014**

DJ/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc: [redacted]