

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

IN THE MATTER OF:

██████████
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██████████
██████████

Reg. No.: 14-001393
Issue No.: 2001
Case No.: ██████████
Hearing Date: June 17, 2014
County: JACKSON

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 June 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included ██████████ of ██████████. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor ██████████.

ISSUE

Did the Department properly deny Claimant's application for retroactive Medicaid (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. On August 22, 2013, the Department received Claimant's application for MA going back to March 2012.
2. Claimant was approved by the Social Security Administration for Supplemental Security Income effective June 2012.
3. Claimant had previously applied for MA but that was denied in a Notice of Case Action (NCA) dated June 13, 2012 based upon a review of Claimant's medical condition by the Medical Review Team (MRT).
4. On April 23, 2014, the Department received a hearing request from Claimant's agent, ██████████.

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.

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. It only mailed to Claimant a copy of the June 13, 2012 NCA, even though Claimant submitted a new application on August 22, 2013. The Department did not make that NCA a part of the record.

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."

Claimant 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.

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 L&S application for MA. Because Claimant was entitled to SSI effective June 2012, she was eligible for retro MA back to March 1, 2012.

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 denied Claimant's application for retro-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 August 21, 2013, 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 March 2012 ongoing.



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

Date Signed: **6/17/2014**

Date Mailed: **6/18/2014**

DTJ/sw

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:

