

**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.: 14-013817
Issue No.: 2001; 3001
Case No.: ██████████
Hearing Date: January 22, 2015
County: WAYNE-DISTRICT 15
(GREYDALE)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 January 22, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) and Medical Assistance (MA) benefits effective October 1, 2014?

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 an ongoing recipient of FAP benefits. See Exhibit 1, pp. 11-23.
2. Claimant was an ongoing recipient of MA - Group 2 Spend-Down (G2S) coverage. See Exhibit 1, pp. 11-23.
3. On or around August 18, 2014, Claimant submitted a redetermination (regarding his MA benefits only). With the redetermination, Claimant included two bank receipts dated August 13, 2014 and August 25, 2014, which showed an account balance of \$12,359.38. See Exhibit 1, pp. 5-6.
4. On September 18, 2014, the Department sent Claimant a Health Care Coverage Determination Notice (determination notice) notifying him that his MA benefits

would close effective October 1, 2014, ongoing, due to excess assets. See Exhibit 1, pp. 8-10.

5. On September 29, 2014, Claimant filed a hearing request, protesting his MA/Adult Medical Program (AMP) and FAP case closures. See Exhibit 1, pp. 2-4.
6. Effective October 1, 2014, Claimant's FAP benefits closed; however, the Department failed to send Claimant a notice of case closure. See Exhibit 1, p. 23.

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 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

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.

MA benefits

As a preliminary matter, Claimant requested a hearing disputing the MA/AMP benefits. See Exhibit 1, pp. 2-4. However, a review of Claimant's Eligibility Summary indicated he did not have AMP benefits. See Exhibit 1, pp. 11-23. As such, it appears that Claimant check marked AMP benefits in error and this Administrative Law Judge (ALJ) will not address any AMP benefits further for lack of jurisdiction. See BAM 600 (July 2014), pp. 4-6. Nevertheless, this ALJ will address if whether the Department properly closed Claimant's MA benefits effective October 1, 2014.

Claimant was an ongoing recipient of MA – G2S. See Exhibit 1, pp. 11-23. On or around August 18, 2014, Claimant submitted a redetermination (regarding his MA benefits only). With the redetermination, Claimant included two bank receipts dated August 13, 2014 and August 25, 2014, which showed an account balance of

\$12,359.38. See Exhibit 1, pp. 5-6. Claimant did not dispute that his balance was approximately \$12,000 for August 2014 to October 2014, but noted that it did vary. Claimant testified that the bank account balance was above \$5,000 for August 2014 to October 2014. Claimant also testified that he only had one personal checking account and no savings account. On September 18, 2014, the Department sent Claimant a determination notice notifying him that his MA benefits would close effective October 1, 2014, ongoing, due to excess assets. See Exhibit 1, pp. 8-10.

G2S is a Supplemental Security Income (SSI) - related Group 2 MA category. BEM 166 (July 2013), p. 1. MA – G2S coverage is available to a person who is aged (65 or older), blind or disabled. BEM 166, p. 1. It was not disputed that Claimant was 37-years-old, and disabled (receives Retirement, Survivors, and Disability Insurance (RSDI), and his group size was one. G2S countable assets cannot exceed the asset limit in BEM 400. See BEM 166, p. 2.

Assets mean cash, any other personal property and real property. BEM 400 (July 2014), p. 1. Asset eligibility is required for G2U, G2C, RMA, and SSI-related MA categories. BEM 400, p. 5. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 6. For all other SSI-related MA categories, the asset limit is: \$2,000 for an asset group of one and \$3,000 for an asset group of two. BEM 400, p. 7. Cash assets include checking/draft accounts, savings/share accounts, and money market accounts. See BEM 400, pp. 13-14.

Based on the foregoing information, the Department properly closed Claimant's MA – G2S coverage effective October 1, 2014, due to excess assets. The evidence presented that Claimant's bank account balance of \$12,359.38 clearly exceeded the \$2,000 asset limit for a group of one. See BEM 400, pp. 6-7 and Exhibit 1, pp. 5-6. As such, the Department properly closed Claimant's MA-G2S in accordance with Department policy.

Nevertheless, the Department failed to establish its burden that it considered Claimant's eligibility for other MA categories. Claimant's MA closure was based on his submitted redetermination; BAM 210 states 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. BAM 210 (July 2014), p. 1. When possible, an ex parte review should begin at least 90 calendar days before the anticipated change is expected to result in case closure. BAM 210, p. 1. The review includes consideration of all MA categories. BAM 210, p. 1.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105 (January 2014), p. 1. Medicaid is also known as Medical Assistance (MA). BEM 105, p. 1.

The Medicaid program is comprised of several sub-programs or categories. BEM 105, p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. BEM 105, p. 1. Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, Plan First! and Adult Medical Program is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 105, p. 1.

Persons may qualify under more than one MA category. BEM 105, p. 2. Federal law gives them the right to the most beneficial category. BEM 105, p. 2. The most beneficial category is the one that results in eligibility or the least amount of excess income. BEM 105, p. 2. The most beneficial category may change when a client's circumstances change. BEM 105, p. 2. The Department must consider all the MA category options in order for the client's right of choice to be meaningful. BEM 105, p. 2.

In this case, it appears that Claimant might possibly be eligible for other MA categories, specifically, MAGI related categories. For example, the Healthy Michigan Plan (HMP) is considered a MAGI related category. Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 4. Available at http://www.michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf. The HMP provides health care coverage for individuals who:

- Are 19-64 years of age
- Have income at or below 133% of the federal poverty level under the MAGI methodology
- Do not qualify for or are not enrolled in Medicare
- Do not qualify for or are not enrolled in other Medicaid programs
- Are not pregnant at the time of application
- Are residents of the State of Michigan

Medicaid Provider Manual, *Michigan Department of Community Health*, January 2015, p. 453. Available at <http://www.mdch.state.mi.us/dchmedicaid/manuals/medicaidprovidermanual.pdf>. All criteria for MAGI eligibility must be met to be eligible for the Healthy Michigan Plan. Medicaid Provider Manual, p. 453.

The evidence presented that Claimant meets some of the HMP requirements, such as age, and he does not qualify for or is not enrolled in Medicare. Claimant does not qualify for or is not enrolled in other Medicaid programs as his G2S – MA coverage was closed due to excess assets. The Department testified that its system would review Claimant's eligibility for other MA categories, but the evidence indicated during the hearing that Claimant might possibly qualify for HMP benefits. This hearing decision does not conclude that Claimant is eligible for HMP, or any other MA categories. However, the Department failed to satisfy its burden that it considered Claimant's eligibility for all other MA categories (ex parte review) effective October 1, 2014, in

accordance with Department policy. See BEM 105, pp. 1-7 and BAM 210, p. 1. As such, the Department will redetermine Claimant's MA eligibility for other MA categories (i.e., HMP) for October 1, 2014, ongoing.

FAP benefits

As a result of Claimant's MA benefits closing due to excess assets, the Department testified that Claimant's FAP benefits also closed due to excess assets. However, the Department acknowledged the redetermination only reviewed Claimant's eligibility for MA benefits. Moreover, the Department testified that a closure notice notifying Claimant of his FAP benefits was never generated.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (July 2014 and October 2014), p. 1. A positive action is a DHS action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a DHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220, p. 1.

There are two types of written notice: adequate and timely. BAM 220, p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). BAM 220, p. 1. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 4.

Based on the foregoing information and evidence, the Department improperly closed Claimant's FAP benefits effective October 1, 2014. The Department failed to provide Claimant with timely notice that his FAP benefits would close effective October 1, 2014. See BAM 220, p. 4. The evidence presented that no written notice was generated in this case to inform Claimant of his FAP closure. Because the Department failed to provide Claimant timely notice of his FAP case closure, it improperly closed his FAP benefits effective October 1, 2014, in accordance with Department policy. See BAM 220, pp. 1-5.

It should be noted that Claimant's hearing request (dated September 29, 2014) is dated before his case closure (October 1, 2014). See Exhibit 1, pp. 2-4 and 23. However, a timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. If timely notice was properly generated in this case, Claimant's hearing request would have been proper and timely. See BAM 600 (July 2014 and October 2014), p. 6 (the client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing). As such, this ALJ has jurisdiction to address Claimant's FAP hearing request.


DECISION AND ORDER

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 (i) acted in accordance with Department policy when it closed Claimant's MA – G2S coverage effective October 1, 2014, due to excess assets; (ii) failed to satisfy its burden that the Department considered Claimant's eligibility for all of other MA categories (ex parte review) effective October 1, 2014, in accordance with Department policy; and (iii) did not act in accordance with Department policy when it closed Claimant's FAP benefits effective October 1, 2014.

Accordingly, the Department's decision is AFFIRMED IN PART with respect to MA – G2S closure effective October 1, 2014 and REVERSED IN PART with respect to Claimant's MA eligibility for other MA categories effective October 1, 2014 and Claimant's FAP case closure effective October 1, 2014.

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. Redetermine Claimant's MA eligibility for October 1, 2014;
2. Reinstate Claimant's FAP benefits as of October 1, 2014;
3. Issue supplements to Claimant for any MA and FAP benefits he was eligible to receive but did not from October 1, 2014, ongoing; and
4. Notify Claimant of its MA and FAP decision in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/29/2015**

Date Mailed: **1/29/2015**

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