

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017028
Issue No.: MEDICAID - ELIGIBILITY
Case No.: [REDACTED]
Hearing Date: February 11, 2015
County: GENESEE-DISTRICT 2

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 11, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Hearing Facilitator.

ISSUE

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

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 July 5, 2014, a Redetermination form was issued to Claimant with a due date of August 1, 2014.
2. On August 1, 2014, a Health Care Coverage Determination Notice was issued to Claimant stating MA was denied for Claimant's son (J.P.C.) because he is not under 21, pregnant, a caretaker of a minor child in the home, over age 65, blind or disabled.
3. On August 1, 2014, a Verification Checklist was issued stating what verifications were needed by the August 11, 2014 due date.
4. Claimant returned requested verification on October 27, 2014.
5. Claimant's son was found eligible for Group 2 under age 21 Medicaid (MA G2U) with a monthly spend down.

6. On October 30, 2014, a Health Care Coverage Determination Notice was issued to Claimant stating MA was approved for her son with a monthly deductible of \$1,486 effective November 1, 2014.
7. On November 17, 2014, Claimant filed a hearing request contesting the MA eligibility determination for her son.

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.

August 1, 2014, Health Care Coverage Determination Notice

In general, verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. Verifications are considered timely if received by the date they are due. The Department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. The Department worker must tell the client what verification is required, how to obtain it, and the due date. The client must obtain required verification, but the Department must assist if the client needs and requests help. If neither the client nor the Department can obtain verification despite a reasonable effort, the Department worker should use the best available information. If no evidence is available, the Department worker is to use their best judgment. BAM 130, 7-1-2014, pp. 1-3.

Specifically, for MA, the Department must allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. If the client cannot provide the verification despite a reasonable effort, the Department can extend the time limit up to two times. The Department is to send a case action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. BAM 130, p. 7.

A notice of case action must specify the following: the action(s) being taken by the department; the reason(s) for the action; the specific manual item which cites the legal base for an action or the regulation or law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. BAM 220, 7-1-2014, p. 2.

In this case, the Hearing Facilitator testified that the August 1, 2014, Healthcare Coverage Determination Notice was issued because Claimant did not return requested verification(s). It is noted that the Verification Checklist was issued August 1, 2014, and had a due date of August 11, 2014. Accordingly, Claimant's son should not have been found ineligible for Medicaid based on a failure to return requested verifications on the same date the verification request was issued.

Further, the August 1, 2014, Health Care Coverage Determination Notice does not indicate the basis for the denial was a failure to comply with verification requirements. Rather, this notice states Claimant's son was not found eligible because he is not under 21, pregnant, a caretaker of a minor child in the home, over age 65, blind or disabled. However, Claimant's son was under age 21. Claimant's son's date of birth is May 25, 1997. Accordingly, Claimant's son was 17 years old when the August 1, 2014, denial notice was issued.

The evidence does not support the denial of eligibility for the August 1, 2014, Health Care Coverage Determination Notice.

October 30, 2014, Health Care Coverage Determination Notice

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, 10-1-2014, p. 35. 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 p. 35. 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 merely 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.

Additionally, the BEM 500 series, including 500-503, 530, 536, 544, and 545, address income eligibility for MA-G2U.

There was some testimony and questions regarding whether or not Claimant's son may have worked in the past and had his own earned income, which pay periods the Department considered to determine Claimant's income, and a possible discrepancy in the child support income. The Hearing Facilitator was unable to explain the basis for all of the income figures used in the submitted budget print out. Similarly, the exhibits did not contain sufficient information for this ALJ to otherwise determine that all of the income figures utilized were correct, for example copies of the reported income and/or verification(s) for child support. Overall, the Department did not provide sufficient evidence to establish that the submitted MA G2U budget was accurately calculated.

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 the August 1, 2014, Health Care Coverage Determination Notice was issued denying eligibility for Claimant's son and the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined MA eligibility for Claimant's son when the October 30, 2014, Health Care Coverage Determination Notice was issued.

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. Re-determine Claimant's son's eligibility for MA retroactive to the September 1, 2014, effective date in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/5/2015**

Date Mailed: **3/5/2015**

CL/hj

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:

