

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018044
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: January 22, 2015
County: CLINTON

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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, an in-person hearing was held on January 22, 2015, from Lansing, Michigan. Participants on behalf of the Claimant included [REDACTED]; her mother, [REDACTED] and her caregiver, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist, [REDACTED] and Family Independence Specialist, [REDACTED].

ISSUE

Did the Department properly take action to change the Claimant's Medical Assistance benefit program from the Freedom to Work program to the Healthy Michigan Plan? If so, did the Department then properly take action to deny the Claimant's application for Medical Assistance based on disability?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was a recipient of the Freedom to Work Medical Assistance benefit program (based on a SSA determination of disability) with a disability review date of August 1, 2014.
2. On May 16, 2014, the Department sent the Claimant a DHS-1605, Notice of Case Action, informing her that her MA type had changed and advised to contact her worker if she wished to pursue MA based on disability. This notice also informed the Claimant that her current coverage would not be affected if she chose not to pursue disability related coverage.
3. On May 31, 2014, the Claimant began to receive unemployment benefits which put her over the income limit for the Healthy Michigan Plan. Therefore, on July 10, 2014, the Department sent the Claimant a DHS-3503, Verification Checklist and

requisite forms so that the Department could determine the Claimant's eligibility for MA based on disability. The Department did not receive any of the requested verification from the Claimant.

4. On July 30, 2014, the Claimant was sent a DHS-1606, Health Care Coverage Determination Notice informing the Claimant that her MA had closed.
5. On September 3, 2014, the Claimant submitted an application for MA.
6. On November 26, 2014, the Department submitted the Claimant's medical records to the Medical Review Team (MRT).
7. On December 8, 2014, the MRT determined that the Claimant was not disabled because she was engaged in substantial, gainful activity.
8. On December 12, 2014, the Claimant submitted a request for hearing to protest the Department's determinations.

PROCEDURAL HISTORY

In this case, the Administrative Law Judge must first decide whether or not the Claimant's hearing request is timely. It is not contested that the Claimant did not file her hearing request within the requisite 90 days that she has to do so. The Administrative Law Judge does not hold the Claimant to the 90 day time limit in which to request a hearing. The May 16, 2014 DHS-1606, Health Care Coverage Determination Notice specifically informed the Claimant that her current coverage would not be affected if she chose not to pursue disability related coverage. That notice further informed the Claimant that benefits are generally the same between categories. The evidence in this case revealed that there is a material difference in the MA programs for the Claimant.

The Claimant is wheelchair-bound and requires a care giver. The Healthy Michigan Plan does not cover the cost of paying the Claimant's care giver but the Freedom to Work plan does. The Administrative Long Judge concludes that this is a material difference in health plans for the Claimant. Because the Claimant was informed that nothing would likely change for her, I find that the DHS-1606, Health Care Coverage Determination Notice was misleading. Had the Claimant been otherwise informed that her care giver costs would no longer be covered, the Claimant would likely have requested a hearing much sooner. As such, this Administrative Law Judge determines that the Claimant's hearing request is granted and proceeds to address the issues.

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.

Additionally, Bridges Eligibility Manual (BEM) 105 (2014) p. 2, provides that when Claimant's qualify under more than one MA category, federal law gives them the right to choose the most beneficial category. The most beneficial category is the one that resulted eligibility or the least amount of excess income. In this case, the most beneficial category for the Claimant was the Freedom to Work program. This program permitted the Claimant to earn income which was then not counted toward her and a benefit which paid for the Claimant's caregiver. This allowed the Claimant to live independently and have an MA benefit, even though the Claimant earns in excess of \$1090 per month which is the substantial gainful activity limit for 2015.

BEM 174 (2013) is the policy that addresses the Freedom to Work (FTW) MA benefit program. It provides that the Claimant must be MA eligible before eligibility for FTW be considered. The Claimant in this case was eligible for MA prior to receiving FTW, because the Claimant was an SSI recipient. Essentially, the Claimant was considered for the FTW program because her eligibility for SSI had ended because she began working.

BEM 260 (2013) p. 1, provides that if a Claimant's SSI eligibility based on disability or blindness was terminated due to financial factors, continue medical eligibility for MA. Medical development and MRT certification are not initially required. Schedule a medical review 12 months from the date of SSI termination. The Claimant must meet all financial and other non-financial factors for SSI related MA. In this case, the Department testified that the Claimant has had the Freedom to Work program from approximately 2007 until it closed in August 2014. The Department had neglected to do a medical review 12 months from the date of the SSI termination and indeed, did not do a medical review until the review which resulted in the closure of August 1, 2014.

The MRT denied the Claimant's application for disability under step one of the analysis because the Claimant works 20 hours per week making no age of \$16.50 per hour or \$1320 per month. Per the Social Security Administration website, \$1090 is the limit on the amount of money a non-blind, disabled individual can earn before it is considered substantial gainful activity. Essentially, because the Claimant wishes to be independent and continue working and making in excess of the limit of substantial gainful activity, she can no longer be considered qualified for disability. This was discussed during the hearing. The Claimant and her mother both testified to their great disappointment that essentially the Claimant is forced into being dependent when she is capable of actually working. If there is a twelve-month limit on the Claimant's Freedom to Work MA benefits and then she is forced to apply for disability MA, and it is a condition of eligibility for disability MA that the Claimant not work, the Claimant is forced to either quit her job or reducer hours so that they result in income that is less than substantial gainful activity.

The Claimant and her mother testified that it is just this situation that defeats the entire purpose of the Freedom to Work program.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first factor to be considered is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, Claimant is working and earning in excess of \$1090.00 per month. Therefore, Claimant is disqualified at this step in the evaluation.

It was explained to the Claimant and her mother that the Administrative Law Judge has no equity jurisdiction. It was explained to the Claimant and her mother that they have further avenues of redress beyond this hearing. However, having researched these issues and deliberated over the matter at length at this point, the Administrative Law Judge can also suggest to the Claimant that she seek a policy exception from the Department as well as from the SSA. Otherwise, the Claimant can reduce her hours and wages so as to be under the SGA limit, reapply for SSI and then reapply for MA disability.

The Administrative Law Judge recognizes the Claimant's difficult position as a result of the application of the Departments policies. However, having no equity jurisdiction, the Administrative Law Judge does conclude that the Department was acting in accordance with departmental policy when taking action to change the Claimant's MA plan and when taking action to deny the Claimant's application for disability MA.

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 acted in accordance with Department policy when it took action to change the Claimant's MA plan and when it took action to deny the Claimant's application for disability MA.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/27/2015**

Date Mailed: **1/27/2015**

SEH/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:

[REDACTED]