

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-11924
Issue No(s): 2010
Case No.: [REDACTED]
Hearing Date: January 9, 2014
County: Clinton

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 telephone hearing was held on January 9, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Lead Worker [REDACTED] and Family Independence Specialist [REDACTED].

ISSUE

Did the Department properly deny Claimant's request for an exception that would allow her Adult Medical Program (AMP) to be reinstated?

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 on-going AMP recipient.
2. After taking in four children while their mother was incarcerated, Claimant applied for Family Independence Program (FIP) and Medicaid (MA) benefits to ensure she and the children had medical insurance.
3. Because she was covered by MA, Claimant was no longer eligible for AMP.
4. When the children's mother was released from jail they returned to her care and Claimant's FIP and MA were closed.
5. On August 29, 2013, Claimant's case worker submitted a request for a policy exception that would allow Claimant to have her AMP benefits reinstated.
6. On September 11, 2013, the request was denied by the Department of Community Health.

7. On November 6, 2013, Claimant requested a hearing.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Michigan Administrative Code, R 400.3101 to .3131.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

The eligibility requirements for AMP are found in BEM 640. Enrollment in AMP is limited to only that period when the Department of Community Health declares enrollment to be open. The last open enrollment period was last April, and Claimant was approved for AMP beginning April 23, 2013.

As stated on Page 1 of BEM 640,

“Applications received during the freeze on AMP enrollments must be registered and denied using “applicant did not meet other eligibility requirements” as the denial reason.

“Applicants must be informed that the reason for denial is an enrollment freeze.”

If an AMP recipient becomes eligible for full MA, their AMP is closed at the end of the current month, and their MA becomes effective at the beginning of the next month. BEM 640, p 6.

The Department recognizes that “policy releases cannot handle every conceivable situation.” BEM 100, p 8. “Policy exception decisions for case specific problems not covered by published policy may be issued on form DHS-1785, Policy Decision, or a DCH memo by either of the following: The Department of Community Health (DCH) central office for MA and AMP.”

When Claimant took in four children while their mother was in jail, she became eligible for Medicaid, and her AMP was terminated. Then, when the children returned to their mother's care, she was no longer eligible for MA. Claimant was then left in a "no-man's land" where she could not receive medical assistance under MA, while at the same time she could not re-enroll in AMP due to the freeze in enrollment. Claimant is not disabled, she has no minor children in her home, and she is not age 65 or older, so she is not eligible for any other coverage. Claimant works part-time 23 hours per week as a home health aide.

Claimant suffers from significant health issues. Notably, she has constant headaches, lumps on her legs and head, and her eyes are going bad. She had a sister and brother who both died from brain cancer, and she has another sister who is terminally ill with leukemia. She has been advised that she needs regular CAT scans because of her family history of brain cancer and her constant headaches.

"There are three situations for which policy exceptions may be approved and issued on the Policy Decision form by the DHS and/or DCH central offices for case specific situations:

"There is no existing policy in manuals, or numbered bulletins that applies in a specific case.

"A policy exception is needed for use in a specific case due to a new legal decision or a new law or regulation that is not yet official DHS policy.

**"FIP, SDA, CDC, MA, AMP and refugee assistance programs
Only**

"A policy exception is needed based on unique and rare circumstances in a specific case to avoid extreme and unusual hardship on the client." BEM 100, pp 9-10. (Emphasis in original.)

In a memorandum dated September 11, 2013, the Michigan Department of Community Health concluded that the Claimant did not fall within any of the three exceptions. Specifically DCH found that there is established policy, there is no new legal change that is not yet official DHS policy, and this case does not qualify as a unique or rare circumstance. See Exhibit 1 Page 6.

In In re Complaint of Rovas against SBC Michigan, 428 Mich 90 (2008), the Michigan Supreme Court discussed "extreme hardship" in the context of legislation that does not address a specific factual situation, or where the legislation is ambiguous. In footnote 58 at page 110, it says:

See *Immigration & Naturalization Service v Jong Ha Wang*, 450 US 139, 144; 101 S Ct 1027; 67 L Ed 2d 123 (1981) ("The crucial question in this case is what constitutes 'extreme hardship.' These words are not self-explanatory, and reasonable men could easily differ as to their

construction.”), and *Train v Natural Resources Defense Council, Inc*, 421 US 60, 87; 95 S Ct 1470; 43 L Ed 2d 731 (1975) (“We therefore conclude that the Agency’s interpretation of §§ 110(a)(3) and 110(f) was ‘correct,’ to the extent that it can be said with complete assurance that any particular interpretation of a complex statute such as this is the ‘correct’ one.”).

The Administrative Law Judge agrees that there is policy that applies in this case, and there is no known change in the law that is not reflected in official Department policy. However, the Claimant has presented a specific case of unique and rare circumstances that warrant an exception to avoid extreme and unusual hardship: Claimant was enrolled in AMP; she took it upon herself to provide care for four children while their mother was in jail; by taking in the children and enrolling herself and the group in MA, she was no longer eligible for AMP; after the children were returned to their mother she was no longer eligible for any medical program; she has significant health issues that need to be addressed, and without any medical benefits she cannot obtain treatment; she has a family history of premature death.

The Claimant has presented compelling evidence that “A policy exception is needed based on unique and rare circumstances in a specific case to avoid extreme and unusual hardship on the client.”

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 an exception that would allow her to re-enroll in AMP.

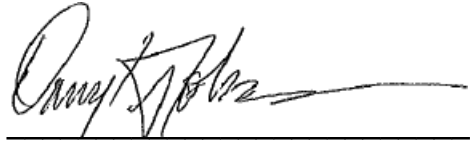
DECISION AND ORDER

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. Grant Claimant a policy exception and allow her to enroll in AMP effective September 1, 2013.

2. To the extent required by policy, provide Claimant with retroactive and supplemental AMP benefits.



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

Date Signed: January 10, 2014

Date Mailed: January 10, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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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 48909-07322

DTSJ/las

cc:

