

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

IN THE MATTER OF:



Reg. No.: 2014-26907
Issue No.: 2001
Case No.: [REDACTED]
Review Date: March 28, 2014
County: Genesee-12

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

STATE LEVEL ADMINISTRATIVE REVIEW DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Bridges Hearing Pilot Bulletin (BPB) 2013-010 (6-1-2013) following Claimant's request for an appeal of a local evidentiary hearing decision dated January 31, 2014. The appeal was not scheduled for a hearing based on BPB 2013-010, pages 26-28 (6-1-2013). The following is an administrative review of the local evidentiary hearing record which includes a review of the digital recording of the hearing, the facts of the case, the applicable law and the evidence presented at the local evidentiary hearing.

PROCEDURAL HISTORY

On December 19, 2013, the Department of Human Services ("Department") mailed Claimant a Notice of Case Action (DHS-1605) which effective February 1, 2014 closed Claimant's Medical Assistance (MA) Healthy Kids for Pregnant Women (HKP) (MA-HKP) case. On December 30, 2013, Claimant requested a hearing to challenge the Department's action pertaining to her MA-HKP case. On January 27, 2014, Claimant had a local evidentiary hearing before a hearing official pursuant to MCL 400.9, MCL 400.37, Mich Admin Code R 400.903 and BPB 2013-010 (6-1-2013). On January 31, 2014, the hearing official issued a Local Evidentiary Hearing Decision which affirmed the Department. On February 12, 2014, the Michigan Administrative Hearing System (MAHS) received Claimant's request to appeal the Local Evidentiary Hearing Decision to an Administrative Law Judge.

LOCAL EVIDENTIARY RECORD

The Administrative Law Judge, based on an administrative review of the local evidentiary hearing digital recording, the evidence presented at the local evidentiary hearing, the local evidentiary hearing decision and the applicable law, finds the following:

1. The hearing official determined the following material facts:
 - Claimant was an ongoing recipient of Medical Assistance benefits under the Healthy Kids for Pregnant Women category (LEH Decision at p. 1)
 - Claimant, on December 4, 2013, reported to the Department that she had a miscarriage on or about November 24, 2013. (LEH Decision at p. 2)
 - On December 19, 2013, the Department sent Claimant a Notice of Case Action which notified her that her MA-HKP case would close effective February 1, 2014-ongoing, because she was not under 21, pregnant, a caretaker of a minor child in her home, not over 65 (aged), blind or disabled. (LEH Decision at p. 2)
2. The hearing official included the following evidence in the local evidentiary hearing record:
 - Bridges Case Comments-Summary (Exhibit 1, p 5)
 - Notice of Case Action dated 12/04/2013 (Exhibit 1, pp. 6-8)
 - Notice of Case Action dated 12/19/2013 (Exhibit 1, pp. 9 & 10)
3. The hearing official found that the Department properly closed Claimant's MA-HKP case in accordance with Department policy. (LEH Decision & Order at p. 3)

ISSUE

Did the Local Evidentiary Hearing Official properly affirm the Department's decision close Claimant's MA-HKP case because she was not under 21, pregnant, a caretaker of a minor child in the home, not over 65 (aged), blind or disabled?

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).

Effective May 1, 2013, the Department replaced BRB 2013-007 with the Bridges Hearing Pilot Bulletin, which is BRB 2013-010. This hearing pilot policy is for the DHS county offices that are participating in the Hearings Pilot for assistance payment programs. The pilot counties are: (1) Genesee County, effective May 2013; (2) Washtenaw County, effective July 2013; and (3) Jackson County, effective September 2013. See BRB 2013-010, p. 1 (6-1-2013).

The hearings pilot policy applies to the following programs: Family Independence Program (FIP), State Disability Assistance (SDA) (Eligibility), Refugee Cash Assistance (RCA), Food Assistance Program (FAP), Medicaid (MA) (Eligibility), Child Development and Care (CDC) and State Emergency Relief (SER). See BRB 2013-010, p. 1 (6-1-2013).

With regard to the above-listed programs, BRB 2013-010 provides that clients have the right to contest a department decision affecting eligibility or benefit levels when they believe the department has taken an action in error. The department now provides a **two-step hearing process** to review the decision and determine appropriateness. The following policy meets the federal and state requirements for a hearing. BRB 2013-010, p 1, 6-1-2013. (Emphasis added). Step One: A local evidentiary hearing conducted by a hearing official. There are appeal rights from the local evidentiary hearing to a state level administrative hearing system. Step Two: A state level hearing with Michigan Administrative Hearing System (MAHS). BRB 2013-010, p 1, 6-1-2013.

For FIP, SDA (Eligibility), RCA, FAP, MA (Eligibility) CDC and SER, the department, attorney general, client and/or the authorized representative, or authorized hearing representative may file a written request for a state level review. BRB 2013-010, p 26, 6-1-2013. For FIP, SDA (Eligibility), RCA, FAP, MA (Eligibility) CDC and SER, requests for a state level review will be scheduled for an administrative review of the record unless a *de novo* hearing is specifically requested. BRB 2013-010, p 27, 6-1-2013. For FAP only, requests for a state level review will be scheduled for a *de novo* hearing unless an administrative review of the record¹ of the local evidentiary hearing is specifically requested. BRB 2013-010, p 27, 6-1-2013.

If the MAHS holds in favor of the client, eligibility will be determined or benefits will be restored as directed by the state level review decision and order. MAHS has 45 days from the date the Request for Hearing was received to schedule and conduct the state level hearing or administrative review and issue the decision and order. BRB 2013-010, p 27, 6-1-2013. A MAHS administrative law judge will review the entire record established at the local evidentiary hearing. The administrative law judge will consider the admitted evidence, the digital recording of the local evidentiary hearing, and the applicable law and policy, and will reach an independent decision. BRB 2013-010, p 30, 6-1-2013. The ALJ determines the facts based only on evidence introduced at the state level hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BRB 2013-010, p 30, 6-1-2013.

In the instant matter, Claimant appeals the hearing official's decision to affirm the Department's closure of Claimant's MA-HKP case.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, and is implemented by CFR Title 42. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 *et seq.*, and MCL 400.105.

Healthy Kids for pregnant women (HKP) is a FIP-related Group 1 MA category. BEM 125, p 1 (7-1-2013). Under the HKP category, MA is available to a woman while she is pregnant, the month her pregnancy ends and during the two calendar months following

¹ "Administrative review of the record" means a review of the local evidentiary hearing digital recording, the facts of the case, the applicable law, and evidence presented at the local evidentiary hearing. See BRB 2013-010, p 27, 6-1-2013.

the month her pregnancy ended regardless of the reason (e.g., live birth, miscarriage, stillborn). Once eligible for HKP a woman remains eligible until the end of her two month post-partum period unless she moves out of state or dies. BEM 125, p 1.

Here, the record demonstrates that Claimant requested a hearing to challenge the Department's to close her MA-HKP case. Claimant was provided with a hearing on January 27, 2014. The hearing official elicited testimony from the parties. The Department took the position that Claimant was no longer eligible for MA-HKP benefits after she suffered a miscarriage on or about [REDACTED]. According to the Department, Claimant reported the miscarriage to the Department on December 4, 2013. The Department argued that Claimant's MA-HKP properly closed because she no longer met the eligibility requirements for MA-HKP at the time. During the hearing, Claimant confirmed that she had a miscarriage on or about [REDACTED], but that she experienced medical complications through the end of November, 2013. Claimant also testified that she requested MA coverage for a surgical procedure scheduled for [REDACTED] and for post-surgical follow-up medical treatment through February, 2014. Claimant further testified that she was 39-years-old, has two adult children (ages 19 and 20, respectively) and that the 19 year old is disabled. Claimant denied that she is disabled.

This Administrative Law Judge has carefully reviewed the entire record including the digital recording of the local evidentiary hearing. The hearing official elicited testimony from Claimant and the Department's hearing facilitator. The record shows that the hearing official reviewed the following documents: Claimant's request for hearing, the Department's hearing summary, the case comments summary, and the two notices of case action relevant in this matter. It should be noted that the instant matter is less document intensive than it relies upon testimony and the application of BEM 125.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

The issue in the instant appeal is whether the hearing official properly found that Claimant was not entitled to MA coverage during the month of February, 2014. Based on the testimony, there was no dispute that Claimant suffered a miscarriage on or about November 24, 2013. Neither party disputed this fact. Nor is there any dispute regarding the language in BEM 125 which provides that MA is available to a woman while she is pregnant, the month her pregnancy ends and during the two calendar months following the month her pregnancy ended regardless of the reason. Here, Claimant's pregnancy ended on or about [REDACTED]. The hearing official correctly applied BEM 125 when he determined that Claimant is eligible for MA coverage for two calendar months (December, 2013 and January, 2014) following the month her pregnancy ended

(November, 2013). Claimant's testimony also confirmed that she was not eligible for other MA categories. She stated she was age 39 (not aged nor under 21), not pregnant, not a caretaker of a minor child in her home, not blind and not disabled. Because Claimant's MA coverage under HKP ended on January 31, 2014 and does not extend into February, 2014, the hearing official's decision should be upheld.

The Administrative Law Judge, based on the recorded testimony, the evidence admitted at the local evidentiary hearing and the above Conclusions of Law, finds that the Department acted in accordance with Department policy when it closed Claimant's MA case effective February 1, 2014.

DECISION AND ORDER

Accordingly, the Hearing Official's decision is **AFFIRMED**.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 28, 2014

Date Mailed: March 31, 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.

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

CAP/las

cc:

