

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-31370
Issue No(s): 2011
Case No.: [REDACTED]
Hearing Date: May 6, 2014
County: Jackson County DHS

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, an in-person hearing was held on May 6, 2014, from Jackson, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, [REDACTED], Attorney, Legal Services of South Central Michigan, [REDACTED], Sexual Assault Nurse Examiner Program Coordinator, AWARE, [REDACTED], CMH Case Manager. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistant Attorney General, [REDACTED], Lead Worker Office of Child Support, [REDACTED], Family Independence Manager (FIM), and [REDACTED] Eligibility Specialist (ES).

ISSUE

Did the Department properly close Claimant's Medicaid case based on non-cooperation with child support requirements?

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 a Medicaid recipient.
2. On September 23, 2013, Claimant submitted a Claim of Good Cause – Child Support form marking that her daughter was conceived due to forcible rape.
3. On November 5, 2013, the Office of Child Support placed Claimant in non-compliance.
4. On December 27, 2013, a Notice of Case Action was issued to the Claimant stating Medicaid was denied for Claimant effective December 1, 2013 based on non-cooperation with child support requirements.

5. On December 27, 2013, the Claimant filed a request for hearing contesting the Department's action.

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, parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department, including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. Cooperation is a condition of eligibility for Medicaid. The custodial parent or alternative caretaker of children must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. Cooperation is assumed until negative action is applied as a result of non-cooperation being entered. The non-cooperation continues until a comply date is entered by the primary support specialist or cooperation is no longer an eligibility factor. The Department worker is to ask a disqualified client at application, redetermination or reinstatement if they are willing to cooperate. A disqualified member may indicate willingness to cooperate at any time. Immediately inform clients willing to cooperate to contact the primary worker from the CS icon or a support specialist can be reached by calling 1-866-540-0008 or 1-866-661-0005. BEM 255 10-1-2013 pp. 1-15.

The policy specifies that the child being conceived due to incest or forcible rape falls within the good cause type of cases in which establishing paternity/securing support would harm the child. The policy directs the Department to not require cooperation/support action in this circumstance. BEM 255 p. 3.

A claim of good cause must be supported by written evidence or documented as credible. Verification of good cause due to domestic violence is required only when questionable. BEM 255 p. 18.

Verification sources for domestic violence include: documented receipt of domestic violence counseling or client is residing in a domestic violence shelter; medical records; court records (for example, personal protection order or petition); police records (for

example, domestic disturbance response); other case record information (including Children's Services). BEM 255 p. 19.

In this case, Claimant submitted a Claim of Good Cause –Child Support indicating that her daughter was conceived due to forcible rape on September 23, 2013. It is noted that the form has checkboxes to mark when this situation applies, a space to list the names of child(ren) affected, and only indicates that supporting documentation may be requested. The Eligibility Specialist wrote on this form that on September 26, 2013, Claimant indicated she did not have supporting documentation. (Exhibit B) On November 5, 2013, the Office of Child Support placed Claimant in non-compliance.

The Department noted that the Claimant did not provide any details regarding the incident on the Claim of Good Cause – Child Support form or in her discussion with the ES. However, it is noted that the Claim of Good Cause – Child Support form does not have a space where additional details regarding the incident are to be provided. The testimony of the ES indicated the September 6, 2013 phone conversation was the first time he spoke with Claimant. The testimony of the ES further indicated the other contact(s) he had with Claimant were after the case action at issue for this hearing. It would be expected that a victim of forcible rape would not be comfortable providing details of the rape to someone she has never met during their first phone conversation. Particularly so as Claimant credibly testified she understood from her telephone conversation with the ES that supporting documentation would be required for the Department to find good cause.

The testimony of the ES and the FIM indicated they cannot just take an individual's word for it and they never find good cause without supporting documentation. The types of verifications they indicated would have been acceptable were those the BEM 255 policy lists for domestic violence. While this ALJ understands the Department's concerns with preventing fraudulent claims of good cause, requiring supporting documentation in all cases is not consistent with the BEM 255 policy to only require verification of good cause due to domestic violence when questionable.

Claimant provided credible testimony regarding the forcible rape that resulted in the conception of her daughter during the in-person hearing. The forcible rape occurred in 2000 in Florida. Understandably, it took quite some time for Claimant's attorney to obtain records from out of state providers in hopes they might contain any documentation of the rape, which Claimant had not even reported to the police. Further, Claimant's inconsistent Medicaid coverage in Michigan has made it difficult for her to get through the referral process and actually receive counseling here. Records submitted in accordance with the Interim Order Extending the Record, in part, documented sexual assault counseling and Claimant's history of multiple rapes, two of which resulted in pregnancy. (Exhibit 3) Claimant's credible testimony and the supporting circumstantial evidence are sufficient to establish good cause.

Additionally, the evidence establishes that the Department failed to provide Claimant with required timely notice regarding the Medicaid case closure. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220 7-1-2013 p. 4. The Department alleged notice was mailed to Claimant on November 12,

2013 with a December 1, 2013 effective date. However a review of the November 12, 2013 Notice of Case Action reveals that the Food Assistance Program (FAP) was the only program addressed in that notice. (Exhibit A, pages 4-6) Rather, the evidence indicates a Notice of Case Action was not mailed to Claimant regarding Medicaid until December 27, 2013, with a retroactive effective date of December 1, 2013. Accordingly, the Department failed to provide Claimant with advance notice of the Medicaid case closure. (Exhibits 1 and C)


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 closed Claimant's Medicaid case based on non-cooperation with child support requirements.

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-instate Claimant's Medicaid case retroactive to the December 1, 2013 effective date subject to the finding that Claimant had good cause and re-determine eligibility in accordance with Department policy.
2. Remove the associated child support disqualification from Claimant's support history.
3. Issue Claimant any supplemental benefits she may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 22, 2014

Date Mailed: July 22, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

CL/hj

cc:

