

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20145779
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: November 5, 2013
County: Genesee (16)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

STATE LEVEL DE NOVO 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 Authorized Hearing Representative's (AHR) October 22, 2013 request for a *de novo* state level review hearing. After due notice, a three-way telephone hearing was held on November 5, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's AHR from [REDACTED]) and [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator/Eligibility Specialist).

ISSUE

Did the Department properly determined Claimant's eligibility for Medical Assistance (MA) or "Medicaid"?

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 May 2, 2012, Claimant's AHR sent the Department an application for MA (DHS-1171) and Retroactive Medicaid Application (DHS-3242) seeking retroactive MA for February, March and April, 2012.
2. On September 13, 2012, the Department mailed Claimant's AHR a Notice of Case Action (DHS-1605) which, effective February 1, 2012, denied Claimant's MA application due to excess income and for failure to provide requested verifications.

3. On or about December 7, 2012, Claimant's AHR requested a hearing challenging the Department's calculation of assets for the retroactive month of February, 2012.¹
4. On May 8, 2013, Claimant had an administrative hearing.
5. On [REDACTED], Administrative Law Judge [REDACTED] issued a Hearing Decision that reversed the Department and ordered the Department to reinstate and reprocess Claimant's May 2, 2012 application including any necessary verifications regarding the disposition and excludability of funds from Claimant's September 1, 2011 RSDI payment.
6. On May 15, 2013, the Department mailed Claimant's AHR a Verification Checklist (DHS-3503) which was due on May 28, 2013.
7. On May 28, 2013, Claimant's AHR requested an extension of the verification due date.
8. The Department granted the first request for extension until June 7, 2013.
9. On June 7, 2013, Claimant's AHR requested a second extension of the verification due date.
10. The Department granted the second request for extension until June 17, 2013.
11. On June 17, 2013, Claimant's AHR requested a third extension of the verification due date.
12. The Department granted the third request for extension until June 27, 2013.
13. On June 27, 2013, Claimant's AHR requested a fourth extension of the verification due date.
14. The Department did not grant the fourth request for extension.
15. On July 1, 2013, the Department mailed Claimant's AHR a Notice of Case Action (DHS-1605) which denied Claimant's MA application due to ineligibility because (1) "the value of your countable assets is higher than allowed for this program" and (2) "verification of life insurance (BEM 400), Lump sum (BEM 400) was not returned for [REDACTED]."
16. On July 17, 2013, Claimant's AHR requested a hearing to dispute the Department's decision to deny the application.

¹ Claimant's AHR asserted that the Department failed to include retroactive RSDI benefits received in June, 2011 and that the Department overestimated the value of Claimant's vehicle.

17. On [REDACTED], Claimant had a Local Evidentiary Hearing.
18. On [REDACTED], Hearing Official [REDACTED] issued a Local Evidentiary Hearing Decision which affirmed the Department.
19. On October 22, 2013, Claimant's AHR requested a de novo hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 MA (Eligibility), 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.

If the Michigan Administrative Hearing System 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. The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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 appealed and requested a *de novo* hearing regarding the Department's decision to deny Claimant's application for Medical Assistance (MA) or "Medicaid" due to excess assets and for failure to properly provide requested verifications.

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.

Here, the Department argues that it properly denied Claimant's application for Medicaid (and Retroactive Medicaid) for the following reasons: (1) verification of Claimant's life insurance policy was not submitted; (2) Claimant's 1984 Chevy Corvette, which according to the NADA was valued at [REDACTED], exceeded the \$2,000.00 asset limit for MA eligibility; and (3) Claimant failed to provide verification that the [REDACTED]² deposited into Claimant's [REDACTED] account was from Claimant's RSDI lump sum payment. According to the Department, Claimant transferred [REDACTED] of [REDACTED] from his RSDI lump sum into his [REDACTED] account, which means that [REDACTED] was countable toward his [REDACTED] vehicle value for a total asset amount of [REDACTED]. According to the Department, Claimant provided the requested verification except for verifications concerning the location of [REDACTED] that was deposited into Claimant's [REDACTED] account and the value of his life insurance policy. The Department also takes the position that the value of Claimant's corvette was in excess of the allowable amount for purposes of Medicaid eligibility.

Claimant's AHR contends that on June 26, 2011, Claimant received a RSDI lump sum in the amount of [REDACTED] which was directly deposited into his account at [REDACTED]. Claimant then stated, on or about October 7, 2011, he wrote a check in the amount of [REDACTED] from the [REDACTED] account into his [REDACTED] account. Claimant also

² This was previously identified as [REDACTED], but Claimant's AHR contends it should properly be [REDACTED].

testified that he did not add any funds to the [REDACTED] account at any time and that all the money in that account was from the RSDI lump sum.

Claimant's AHR also argued that the Department failed to properly assist when they requested assistance obtaining verifications of Claimant's life insurance policy. Claimant's AHR indicated that it made reasonable attempts to procure verifications of the life insurance policy, but was unable to obtain these verifications. Claimant testified that this life insurance policy was for accidental death or dismemberment through [REDACTED]. According to Claimant, [REDACTED] is automatically deducted from his account on a quarterly basis. (Apparently, Claimant's [REDACTED] policy may have been administered by [REDACTED] or some other entity.) Alternatively, Claimant's AHR indicated that the Department was aware that it was difficult to obtain this verification and stated that because the Department was verbally informed that Claimant's life insurance policy did not have a cash surrender value, it should have processed the application using that information as the best available information. Claimant's AHR also argued that the Department could have, and should have, obtained the life insurance policy verifications directly from [REDACTED].

Claimant's AHR did not specifically address the Department's arguments concerning Claimant's 1984 Chevy Corvette purportedly being over the \$2,000.00 asset limit.

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record in this matter contained approximately 154 pages of exhibits. A review of the relevant exhibits in this matter is contained below.

The Department mailed Claimant's AHR a Verification Checklist which requested the following: (1) "daily balance for checking/savings accounts for 2/1/12-5/31/12, this includes the [REDACTED] savings account ending in [REDACTED], the [REDACTED] savings account [REDACTED] & [REDACTED] checking account [REDACTED];" (2) "verification of the face/cash value of the life insurance for 2/1/12-5/31/12;" (3) "a dealer value for all vehicles, including the 84 Chevy Corvette and 97 Chevy Tahoe (if vehicles have been totaled, scrapped, or are not working please provide verification); and (4) "verification of the Social Security lump sum payment, including the date received, full value, and remaining balance as of May 2, 2012. If lump sum was deposited into any bank accounts, please provide bank verification of the amount deposited, the account number

it was deposited into, and the bank statement verifying the deposit.” The proofs were due by May 28, 2013.

In response, Claimant’s AHR sent the Department a letter indicating, among other things, that attempts were made to obtain verification of Claimant’s vehicles, the lump sum from the Social Security Administration and the [REDACTED] life insurance policy, which allegedly does not have a cash value. Claimant’s AHR requested an extension until June 7, 2013.

On June 7, 2013, Claimant’s AHR sent the Department a letter that included, among other things, that attempts were underway to obtain verifications of: (1) account [REDACTED] with [REDACTED] bank; (2) Claimant’s vehicles; (3) Social Security Administration lump sum; and (4) life insurance policy from [REDACTED] (does not have a cash value). In this letter, Claimant’s AHR requests a second extension until June 17, 2013.

On June 17, 2013, Claimant’s AHR sent a letter to the Department indicating, among other things: (1) attached was the fair market value of the 1984 Chevrolet Corvette and 1997 Chevrolet Tahoe and (2) attempts were continuing for verifications of Claimant’s life insurance policy from [REDACTED]. Claimant’s AHR requested a third extension until June 27, 2013.

On June 27, 2013, Claimant’s AHR sent a letter to the Department which stated, “our office is still attempting to obtain verification of [REDACTED] life insurance policy. We have been in contact with [REDACTED] who informed us that we must speak to the credit union. We then spoke to [REDACTED] who directed us to their AD&D Department at [REDACTED] which is for Accidental Death and Dismemberment policies. We spoke to [REDACTED] who informed us that [REDACTED] ID number for this policy is [number withheld] and that [REDACTED] has basic coverage which does not carry a cash surrender value. [REDACTED] stated that he is only able to mailed [sic] verification of this policy directly to [REDACTED] and it takes 7 to 10 business days.” Claimant’s AHR requested a fourth extension until July 7, 2013.

The departmental policies that govern the instant matter are summarized below.

According to BAM 130, p. 1 (May 2012), the Department should obtain verification if information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. Verification means documentation or other evidence to establish the accuracy of the client’s verbal or written statements. BAM 130. Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. BAM 130. Verifications are considered timely if received by the date they are due. BAM 130.

The Department sometimes will utilize a verification checklist (VCL) or a DHS form telling clients what is needed to determine or redetermine eligibility. See Bridges Program Glossary (BPG) at page 47. For MA, the client has 10 days to provide requested verifications (unless policy states otherwise). BAM 130. Policy requires the

client to take actions within their ability to obtain verifications and department staff must assist when necessary. BAM 110, p. 7, (May, 2012) If neither the client nor the Department can obtain verification despite a reasonable effort, the Department should use the best available information. If no evidence is available, the Department worker is instructed to “use your best judgment.” BAM 130, p. 3, (May, 2012). If the client cannot provide the verification despite a reasonable effort, the department worker **may** extend the time limit **up to three times**. BAM 130.

Assets must be considered in determining eligibility for MA categories. BEM 400 (October, 2011). Assets are defined as cash, any other personal property and real property. BEM 400. (October, 2011). The MA asset limit for a group size of 1 is \$2,000.00. BEM 400 p. 4 (October, 2011).

Assets are also defined as cash, investments, retirement plans, trusts, and other personal property and real property. See BEM 400, p. 1. Personal property is defined as any item subject to ownership that is not real property, such as currency, savings accounts and vehicles. BEM 400, p. 1. A life insurance policy is an asset only if it can generate a cash value or a cash surrender value, which is the amount of money the policy owner may obtain by canceling the policy before it matures or before the insured dies. BEM 400, p. 33.

In addition, retroactive RSDI-issued benefits received by a client are excluded for nine calendar months beginning the month after payment is received. BEM 400, p. 16. But if the client makes purchases with such funds, including CDs and other time deposits, those shall be included. BEM 400, p. 16. The money may be commingled with other funds but, that amount will count toward the resource limit, if done in such a manner that the retroactive amount cannot be separately identified.

Claimant's AHR did not dispute that the [REDACTED] verifications were never obtained and forwarded to the Department. Instead, Claimant's AHR insisted that the life insurance policy had no cash surrender value. Claimant's AHR points to the several letters requesting extension to prove this point. However, this Administrative Law Judge finds that the Department representative's testimony is more credible than Claimant's and Claimant's AHR's in this regard. The Department is not required to rely upon statements from Claimant or Claimant's AHR regarding the value of a life insurance policy. Claimant's AHR had multiple opportunities to obtain a document from either [REDACTED] or [REDACTED] which indicated that the insurance policy had no cash surrender value. Alternatively, Claimant or his AHR should have provided the Department with a signed authorization allowing the Department to obtain the account information pertaining to the insurance policy. The Department was not required by policy to use these statements as the best available information nor was the Department required to provide a fourth extension of time for these verifications.

Based on the entire record coupled with the testimony in this matter, Claimant and/or his AHR failed to take reasonable steps to procure the requested life insurance policy verifications. The Department provided multiple extensions to comply with the

verification requests. The Department should not be required to grant continuous extensions and wait endlessly for verifications. The evidence in this matter shows that the first time Claimant's AHR articulated the specific problems with obtaining the insurance policy verifications was in the June 27, 2013 letter containing the fourth request for extension. There was no reasonable explanation for the failure to contact [REDACTED] and/or [REDACTED] earlier. Even if Claimant's AHR did contact these entities earlier, there was no reasonable explanation for the failure to include that information in the earlier requests for extension. Here the requested information was available, but Claimant failed to take proper steps to obtain it.

Here, the record and testimony together demonstrate that the Department properly denied Claimant's MA application for failure to return requested verifications concerning Claimant's life insurance policy. Because this Administrative Law Judge finds that the Department properly denied the application for failure to return verifications, he does not need to address the excess asset question which was not raised during the hearing by Claimant's AHR.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department acted properly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly when it denied Claimant's MA application for failure to return requested verifications concerning life insurance policy.

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

IT IS SO ORDERED.



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

Date Signed: December 4, 2013

Date Mailed: December 4, 2013

NOTICE OF APPEAL: 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).

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.

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/aca

cc:

