IN THE MATTER OF:

███████████████

Reg. No.:	14-016273
Issue No.:	2004
Case No.:	██████
Hearing Date:	March 9, 2015
County:	Wayne (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 March 9, 2015, from Detroit, Michigan. ████ ██████████████████████ testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included ██████████, hearings facilitator.

ISSUE

The issue is whether Claimant timely requested a hearing to dispute asset eligibility for Medical Assistance (MA) benefits.

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 ██████, DHS mailed a Notice of Case Action (Exhibits 1-4) informing Claimant's AR of a denial of Claimant's MA eligibility, due to excess assets.

2. On ██████, Claimant applied for MA benefits, via an authorized representative (AR).

3. Claimant's application included a request for retroactive MA benefits from 9/2012.

4. Claimant's only basis for MA eligibility was as a disabled individual.

5. On ████, DHS denied Claimant's MA eligibility, based on a finding that Claimant was not disabled.

6. Claimant subsequently requested an administrative hearing to dispute the finding of disability.

7. On an unspecified date, the Michigan Administrative Hearing System (MAHS) issued a Hearing Decision (Exhibits 6-15) which ordered DHS to "reinstate Claimant's MA benefit application dated ████, including retroactive MA benefits from 9/2012" and to evaluate Claimant's eligibility subject to the finding that Claimant was disabled.

8. On ████, DHS issued a Health Care Coverage Determination Notice (Exhibits 16-17) stating that Claimant was eligible for Medicaid subject to a deductible, effective 12/2012.

9. On ████, Claimant's AR (also Claimant's AHR) requested a hearing to dispute the failure by DHS to process Claimant's MA eligibility from 10/2012 based on the MAHS Hearing Decision.

CONCLUSIONS OF LAW

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

Claimant's AHR's hearing request noted special arrangements for participation or attendance for the hearing; specifically, a 3-way telephone hearing was requested. The request was granted and the hearing was conducted accordingly.

Claimant's AHR requested a hearing to dispute an alleged DHS failure to process Claimant's MA eligibility from 9/2012-11/2012. Claimant's AHR conceded that Claimant's MA eligibility from 9/2012 was not in dispute; thus, only Claimant's MA eligibility from 10/2012-11/2012 remained in dispute. Prior to a substantive analysis, it must be determined whether Claimant's AHR's hearing request was timely.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (7/2013), p. 5. The request must be received in the local office within the 90 days. *Id.*

DHS presented a Notice of Case Action (Exhibits 1-4) dated ██████ due to excess assets. Claimant's AHR's hearing request was dated ██████. Thus, the evidence was indicative that Claimant's AHR failed to request a hearing within the prescribed timeframe.

DHS could not have mailed a notice of denial on ██████ related to an application that had not yet been submitted to DHS. Thus, it can be safely concluded that the notice dated ██████ was not related to Claimant's MA application dated ██████. Claimant's AHR essentially conceded that nothing could be done to change the denial of Claimant's previous application. Claimant's AHR maintained that an acceptable alternative to requesting a hearing in response to the denial notice dated ██████ was to submit a new application including a retroactive MA benefit request.

The notice of denial dated ██████ stated that Claimant was denied MA benefits for the period of "09/01/2012 – Ongoing." DHS asset policy states that DHS is to determine monthly asset eligibility based on the date with the lowest amount of countable assets (see BEM 400).

DHS denied Claimant's before the last day of 11/2012. Thus, it is reasonably possible that Claimant's assets decreased to a level of asset eligibility in 11/2012 and after DHS denied Claimant's MA benefits. This consideration justifies a finding that DHS is required to reconsider Claimant's MA eligibility for 11/2012. The only benefit month left in dispute is 10/2012.

DHS essentially contended that Claimant's 10/2012 MA eligibility was determined and properly denied. DHS also contended that Claimant's AHR missed their opportunity to dispute Claimant's MA eligibility from 10/2012 by waiting so long to request a hearing.

The DHS contention has logic. It could be reasonably found that DHS should not have to reopen a previously made eligibility decision simply because Claimant reapplies. DHS reasoning appears to be based on principles of res judicata. Res judicata allows parties to appeal unfavorable court decisions, but not to refile them.

DHS policy is silent on res judicata. DHS policy also is not known to bar a client from refiling an application and requesting retroactive months which overlap with a previously submitted application. Without supporting policy to justify the DHS contention, the DHS contention will not be accepted. It is found that DHS may not deny an application (or benefit months) by relying on a denial associated with a previously submitted application.

Claimant's AHR contended that jurisdiction for Claimant's MA eligibility from 10/2012 could be derived from an administrative hearing decision. The exact date of the hearing decision is not known, but it is presumed to have been issued close to the month of 6/2014. For purposes of this decision, it will be presumed that the hearing decision mailing month was 6/2014.

The hearing decision ordered DHS to reinstate Claimant's MA application from 2012, including Claimant's request for retroactive MA benefits. DHS only processed Claimant's MA eligibility from 12/2012. DHS contended that Claimant's MA eligibility from 9/2012-11/2012 did not have to be reconsidered because of the previously issued denial. That contention has already been fund to be unpersuasive, in light of Claimant's subsequently submitted application.

When a decision requires a case action different from the one originally proposed, a DHS-1843, Administrative Hearing Order Certification, is sent with the hearing decision. BAM 600 (10/2014), p. 41. DHS is to complete the necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. *Id.*, p. 42.

It was not disputed that DHS failed to comply with the administrative hearing order by reprocessing Claimant's MA eligibility from 10/2012 and 11/2012. Accordingly, DHS will be ordered to determine Claimant's MA eligibility from 10/2012 and 11/2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to comply with an administrative order concerning Claimant's MA eligibility from 10/2012 and 11/2012. It is ordered that redetermine Claimant's MA eligibility for 10/2012-11/2012. The actions taken by DHS are **REVERSED**.

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/17/2015**

Date Mailed: **3/17/2015**

CG / hw

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: