

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-005470
Issue No.: 2001, 2004
Case No.: [REDACTED]
Hearing Date: May 14, 2015
County: Macomb (20)

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 May 14, 2015, from Detroit, Michigan. Robert Cunningham, Claimant's father, testified and appeared as Claimant's authorized hearing representative (AHR). [REDACTED], Claimant's mother, testified on behalf of Claimant. Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], hearing facilitator.

ISSUES

The first issue is whether DHHS properly terminated Claimant's Medical Assistance (MA) eligibility before completing an ex-parte review.

The second issue is whether DHHS properly terminated Claimant's Medicare Savings Program (MSP) eligibility.

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 ongoing Medicaid recipient through AD-Care.
2. Claimant was a disabled individual.
3. On an unspecified date, Claimant applied for MSP eligibility.
4. On [REDACTED], DHHS approved Claimant's MSP eligibility, effective February 2015.

5. On [REDACTED], DHHS terminated Claimant's MSP eligibility, in part, by finding that Claimant was not disabled.
6. On an unspecified date, DHHS determined that Claimant was eligible for Medicaid, subject to a monthly deductible.
7. On an unspecified date, DHHS reconsidered Claimant's Medicaid eligibility and requested a determination of Disabled Adult Child (DAC) eligibility from their central office.
8. On [REDACTED], Claimant requested a hearing to dispute the termination of MSP and Medicaid.

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. DHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. DHHS policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

Claimant requested a hearing, in part, to dispute an MA determination that Claimant was eligible for Medicaid subject to a \$658 monthly deductible. Claimant contended that she should be eligible for Medicaid (with no deductible) through the DAC category. Generally, DAC eligibility is intended for adults who have been disabled their entire lives, who become income ineligible Medicaid after RSDI eligibility through a parent begins.

An administrative finding of Claimant's DAC eligibility would be premature because DHHS has yet to make a determination of Claimant's DAC eligibility. DHS testimony stated that the DAC determination process was started but they are awaiting a decision from their central office; this is a required procedure of DAC eligibility (see BEM 158). There was sufficient evidence to determine if DHHS improperly cut-off Claimant's AD-Care eligibility before considering Claimant's eligibility for other MA categories.

An ex parte review is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. BAM 210 (April 2015), p. 1. When possible, an ex parte review should begin at least 90 calendar days before the anticipated change is expected to result in case closure. *Id.* The review includes consideration of all MA categories. *Id.*

DHHS should have considered Claimant's DAC eligibility before terminating Claimant's AD-Care eligibility. The failure by DHHS to complete an ex-parte review is reversible error. The remedy for their premature termination is to continue Claimant's Medicaid eligibility until the completion of Claimant's DAC determination.

Claimant also requested a hearing to dispute a termination of MSP eligibility. MSP programs offer three different degrees of assistance with payment toward a client's Medicare premium and deductibles. BEM 165 (April 2014), p. 1. Qualified Medicare Beneficiaries (QMB) coverage pays for a client's Medicare premiums, coinsurances, and deductibles. *Id.* Specified Low Income Beneficiaries (SLMB) coverage pays for a client's Medicare Part B premium. *Id.* Additional Low Income Beneficiaries (ALMB) coverage pays for a client's Medicare Part B premium if DHHS funding is available. *Id.* Income is the major determiner of category. *Id.*

It was not disputed that DHHS approved Claimant for MSP eligibility on [REDACTED] (see Exhibits 1-3). During the hearing, it was thought that DHHS terminated Claimant's MSP eligibility and sent a Health Care Coverage Determination Notice (Exhibits 4-6) on [REDACTED]. A closer look at the notice indicates that the notice dated [REDACTED], [REDACTED] had nothing to do with MSP.

DHHS conceded that Claimant was eligible for MSP benefits since February 2015. DHHS also stated that Claimant's MSP eligibility was continued, though inadequate proof was submitted to verify Claimant's continuance of MSP eligibility. To insure that DHHS did not interrupt Claimant's MSP eligibility, it will be found that DHHS is to reinstate Claimant's MSP eligibility so that MSP reinstatement can be verified.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHHS improperly denied Claimant's application for MA benefits. It is ordered that DHHS perform the following actions:

- (1) reinstate Claimant's MSP eligibility, effective February 2015; and
- (2) reinstate Claimant's Medicaid eligibility, effective May 2015, subject to the finding that DHHS failed to complete an ex-parte review before terminating Claimant's Medicaid eligibility.

The actions taken by DHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/18/2015**

Date Mailed: **5/18/2015**

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

