

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-011701
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: September 01, 2015
County: OAKLAND-DISTRICT 4
(NORTH SAGINAW)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on September 01, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. [REDACTED] of Health Claims Advocates represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] and [REDACTED].

ISSUE

Did the Department of Health and Human Services (Department) properly deny the Claimant's application for Medical Assistance (MA)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In September of 2013, the Department received the Claimant's application for Medical Assistance (MA).
2. On October 28, 2013, the Department denied the Claimant's Medical Assistance (MA) application.
3. On April 29, 2015, the Department again denied the Claimant's application for Medical Assistance (MA).
4. On June 29, 2015, the Department received the Claimant's request for a hearing protesting the denial of Medical Assistance (MA).

CONCLUSIONS OF LAW

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

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

Clients must cooperate with the local office in determining initial and ongoing eligibility and this includes the completion of necessary forms. Department of Human Services Bridges Assistance Manual (BAM) 105 (April 1, 2015), p 5.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. The Department uses documents, collateral contacts, or home calls to verify information. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. When documentation is not available, or clarification is needed, collateral contact may be necessary. Department of Human Services Bridges Assistance Manual (BAM) 130 (October 1, 2014), pp 1-9.

In September of 2013, the Department received the Claimant's application for Medical Assistance (MA). On October 28, 2013, the Department denied this application for failure to provide the Department with information necessary to determine her eligibility to receive benefits.

Later, the Department reviewed its denial of the September of 2013, MA application, and determined that its requests for information from the Claimant were not properly sent to the Claimant's representative at that time.

On April 29, 2015, the Department again denied the Claimant's MA application after determining that she did not meet the non-financial requirements of any category of MA benefits.

The Department determined that while the Claimant is a caretaker of a minor child, she does not meet the Department's definition of a primary caretaker. As a caretaker of a minor child, the Claimant is potentially eligible for MA benefits under a Group 2 MA category. The Department determined that another person is the primary caretaker, and that person had already applied for MA benefits for the Claimant's minor child. The Department denied the Claimant's application for MA because she did not fit the definition of a primary caretaker.

When a child spends time with two parents who do not live together, a primary caretaker must be determined. Scheduled vacations and visitation do not interrupt primary caretaker status. The Department will verify the primary caretaker when questioned or disputed. For all Group 2 MA categories, when a child lives with both parents who do not live with each other (for example, child lives with his mother two weeks each month and his father the other two weeks), only one parent, the primary caretaker, is in the fiscal group. The Department will determine a primary caretaker. Department of Health and Human Services Bridges Eligibility Manual (BEM) 211 (January 1, 2015), pp 2-7.

The primary caretaker is the parent who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half the days in a month, when averaged over a twelve month period. The twelve month period begins at the time the determination is being made. Vacations and visitation with the absent parent do not interrupt primary caretaker status. Id.

Joint physical custody occurs when parents alternate taking responsibility for the child's day-to-day care and supervision. It may be included in a court order or may be an informal arrangement between parents. A child is considered to be living with only one parent in a joint custody arrangement. This parent is the primary caretaker. Id.

This Administrative Law Judge finds that the Claimant is the caretaker of a minor child. The Claimant's application for MA benefits for herself and her minor child in September of 2013, created a dispute as to whether she is the primary caretaker of her minor child that should have caused the Department to question a previous determination of that child's primary caretaker.

Based on the evidence and testimony available during the hearing, the Department failed to seek verification of where the Claimant's minor child sleeps on average of a twelve month period. The Department concedes that its requests for verification material was not properly processed causing it to issue a subsequent denial of benefits. This subsequent denial, which also gave the Claimant an opportunity to make a timely request for a hearing, was based on group composition without a full investigation into the Claimant's application for benefits.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that the Claimant is not the primary caretaker of her minor child, or that it properly denied her October 28, 2013, application for Medical Assistance (MA).

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. Allow the Claimant a ten-day period to provide verification of how many nights her minor child was sleeping at her home each month on average for the previous year at the time she applied for Medical Assistance (MA).
2. Reprocess the Claimant's September 1, 2013, application for Medical Assistance (MA).

3. Provide the Claimant with a written notice describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



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

Date Signed: **9/15/2015**

Date Mailed: **9/15/2015**

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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:

