

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-014926
Issue No.: 2004
Agency Case No.: [REDACTED]
Hearing Date: October 14, 2015
County: Oakland-District 2

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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; and Mich Admin Code, R 792.11002. After due notice, a three-way telephone hearing was held on October 14, 2015 from Lansing, Michigan. [REDACTED] (Claimant's Authorized Hearing Representative (AHR) from [REDACTED]) represented Claimant. [REDACTED] (Assistance Payments Supervisor) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department properly refuse to process Claimant's application for retroactive Medicaid (MA-P)?

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 October 17, 2013, the Department received Claimant's Assistance Application (DHS-1171) requesting Medical Assistance (MA) along with a Retroactive Medicaid Application (FIA-3243), which requested retroactive Medicaid coverage back to July, 2013. (Exhibit 1, pp 24-25)
2. On November 5, 2013, the Medical Review Team (MRT) issued a Medical-Social Eligibility Certification (DHS-49-A) which denied Claimant's application for retro Medicaid due to lack of duration of 12 months (PD3). (Exhibit 1, pp 4-5)
3. The Social Security Administration (SSA) approved Claimant for Supplemental Security Income (SSI) with an entitlement date of October 1, 2013.

4. On November 14, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's application for retro Medicaid effective July 1, 2013. (Exhibit 1, pp 2-3)
5. On August 5, 2015¹, Claimant's Authorized Representative (AR) requested a hearing to secure retroactive Medicaid coverage based on the SSI entitlement date per BAM 115.

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.

For MA only, retro MA coverage is available back to the first day of the third calendar month prior to:

- The current application for FIP and MA applicants and persons applying to be added to the group.
- The most recent application (not redetermination) for FIP and MA recipients.
- **For SSI, entitlement to SSI.**
- For department wards; see BEM 117, DEPARTMENT WARDS, TITLE IV-E AND ADOPTION RECIPIENT, the date DHS received the court order for a department ward.

¹ The Department did not argue that Claimant failed to request a hearing in this matter within 90 days of the November 14, 2013 Notice of Case Action. The record shows that the Department local office failed to send the Notice of Case Action to Claimant's Authorized Representative [REDACTED] at the time. This would explain the AR's failure to request the hearing within 90 days. Because there is no evidence in this record that notice was properly sent to Claimant's AR, this Administrative Law Judge will decide this matter on the merits.

- For Title IV-E and special needs adoption assistance recipients; see BEM 117, DEPARTMENT WARDS, TITLE IV-E AND ADOPTION RECIPIENT, entitlement to title IV-E or special needs adoption assistance.

Exception: A person might be eligible for one, two or all three retro months, even if not currently eligible. The DHS-3243, Retroactive Medicaid Application, is used to apply for retro MA. Only one DHS-3243 is needed to apply for one, two or all three retro MA months. See RETRO MA APPLICATIONS in BAM 110. Do not get a DHS-3243 if the person is eligible under Healthy Kids Retro MA Eligibility Requirements. A separate determination of eligibility must be made for each of the three retro months. (See BAM 115 Standard retro MA eligibility requirements). BAM 115 (7-1-2013), pp 11-12 (Emphasis added).

The standard retro MA eligibility requirements provide the Department must determine eligibility for each retro MA month separately. BAM 115, p 13.

To be eligible for a retro MA month, the person must:

- Meet all financial and nonfinancial eligibility factors in that month, and
- Have an unpaid medical expense incurred during the month, or

Note: Do not consider bills that the person thinks may be paid by insurance as paid bills. It is easier to determine eligibility sooner rather than later.

- Have been entitled to Medicare Part A.

See BAM 115, p 13.

Supplemental Security Income (SSI) is a cash benefit for needy individuals who are aged (at least 65), blind or disabled. The Social Security Administration (SSA) determines SSI eligibility. BEM 150 (7-1-2013), p 1.

To be automatically eligible for Medicaid (MA) an SSI recipient must both:

- Be a Michigan resident.
- Cooperate with third-party resource liability requirements.

DHS administers MA for SSI recipients, including a continued MA eligibility determination when SSI benefits end. Ongoing MA eligibility begins the first day of the month of SSI entitlement. **Some clients also qualify for retroactive (retro) MA coverage for up to three calendar months prior to SSI entitlement; see BAM 115.** BEM 150, p 1 (Emphasis added).

BAM 815 contains medical determination procedures for:

- Establishing medical eligibility for assistance programs.
- Determining whether an institutionalized MA client is capable of indicating intent to remain a Michigan resident.

Note: The MRT/SHRT will determine disability/blindness for retroactive MA months even if retroactive MA is not requested by the client at application. If the client subsequently applies for retroactive MA, refer to the DHS-49-A for the disability determination for those retroactive months. BAM 815 (7-1-2013), pp 1, 7 (Emphasis added).

The instant matter is a policy question. Claimant's AR contends that Claimant is eligible for retroactive Medicaid coverage back to July, 2013 based on the October 1, 2013 SSI entitlement date and BAM 115 page 7, which indicates that retro Medicaid is available back to the first day of the third calendar month prior to SSI entitlement. The Department, on the other hand, argues that Claimant, an SSI recipient, is not automatically eligible for 3 months of retro Medicaid coverage prior to the disability onset date. Under these circumstances, the Department contends that Claimant must meet all eligibility factors, including disability. According to the Department, disability, prior to the onset date, is determined by the MRT. The Department further contends that BAM 815, page 7 controls and only allows the MRT to revisit its previous determination if there is new medical evidence.

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. This is an question of policy interpretation, which is not dissimilar to the way a court construes a statute. In construing a statute, a court will presume that every word has some meaning and avoid constructions that would render any part of a statute surplusage or nugatory. *Jenkins v Patel*, 471 Mich 158, 167; 684 NW2d 346 (2004). "Unless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002).

Here, BAM 115, page 1, indicates that "for MA only, retro MA coverage is available back to the first day of the third calendar month prior to . . . entitlement to SSI." This policy clearly provides that retro MA coverage is "available," but it certainly does not provide

that such coverage attaches automatically. In addition, BAM 115 at page 13 provides that the Department must determine eligibility for each retro MA month separately and the person must meet all financial and nonfinancial eligibility factors for that month.

Then BEM 150, page 1 discusses that the SSA determines SSI eligibility and that "some" clients also qualify for retroactive (retro) MA coverage for up to three calendar months prior to SSI entitlement. The inclusion of the word "some" cannot simply be ignored. The Department did not intend that all persons who are determined eligible for SSI are, as a matter of policy, entitled to retro MA coverage. This is where the Department adopts BAM 815, page 7 which requires that the MRT determines disability and that the DHS-49-A is referenced.

Statutory provisions must be read in the context of the entire statute so as to produce a harmonious whole. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). Similarly, the policies BAM 115, BEM 150 and BAM 815 should be read together with regard to the determination of retroactive MA for an SSI recipient. When these policies are read together, they do not provide automatic retro MA coverage when an individual is subsequently approved for SSI. Policy provides that it is the MRT who must determine retroactive MA eligibility.

The material, competent and substantial evidence on the whole record shows that the Department's interpretation of policy is correct and that it was not required to process and approve Claimant's application for retroactive Medicaid back to July, 2013.

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 acted in accordance with Department policy when it refused to process and approve Claimant's retroactive Medicaid application.

DECISION AND ORDER

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



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: 10/20/2015

Date Mailed: 10/20/2015

CAP/las

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:

