

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-002268
Issue No.: 2001, 6001
Case No.: ██████████
Hearing Date: March 19, 2015
County: WAYNE-DISTRICT 49
(GRAND RIVER/WAR)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 19, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ckwell, the Claimant's Authorized Hearing Representative (AHR), also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker/Eligibility Specialist, and ██████████.

ISSUE

Did the Department properly deny the Claimant's CDC application and HMP?

FINDINGS OF FACT

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

1. The Claimant has custody of his three children who have been living with him for several years. The Department approved the Claimant for FAP benefits with his children as part of the group. The Claimant's children who were living with him were open in another medical group with their mother, even though they were not living with her. The mother's worker removed the children from the mother's group for FAP only.
2. The Claimant also applied for Medical Assistance for his children and himself as caretaker relative and was denied HMP because his children were active on another case (their mother's) whom they do not live with.

3. The Department received school records from the Claimant to establish that his children were living with him. The records demonstrated that the children's school records listed the Claimant's address and a contact number for the Claimant and an emergency contact listing the Claimant's mother. The school was in the vicinity of the area where the Claimant lives. The Claimant also credibly testified that a CPS worker sees the children weekly due to their emotional problems and CPS is aware that the Claimant's children reside with him. The Claimant testified that the children receive counseling for problems due to their mother's treatment of them while living with her.
4. On January 21, 2015 the Department issued the Health Care Coverage Determination Notice denying the Claimant Medical Assistance, as he was not a caretaker of minor children or disabled. Exhibit A-2
5. The Department also testified that the Caseworker for the mother would not remove the children from the mother's case even though she removed the children from the mother's FAP case. The three children, who do not live with the mother, are approved for medical assistance in their mother's case number [REDACTED].
6. The Claimant also applied for CDC. The Department issued a Notice of Case Action on January 21, 2015 denying the application for failure to provide verification for information effective October 19, 2014. The information that was not provided was that the provider listed on the application did not have a valid provider license as the provider license was expired. The Claimant's provider has since reapplied for her license to be reinstated. As of the hearing, the license had not been reinstated and the license reinstatement application is pending.

CONCLUSIONS OF LAW

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

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and

the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Additionally, the issue to be determined was whether the Department properly denied the Claimant's HMP application due to its determination that the Claimant was not a caretaker relative or disabled. The Department denied the HMP application due to the Claimant's children being open under another case with their mother, whom they no longer live with. Exhibit A-3. The application was denied also because the Claimant's income for a group of one exceeded the income limit of \$15,521.10.

The Department indicated that it has determined that the Claimant was the primary caretaker of his three children who live with him and included the children in the Claimant's FAP group based upon school records provide by the Claimant and after the mother's caseworker removed the children from the mother's FAP group.

BEM 135 provides guidance as regards verification of primary caretaker, relationships and what the Department can accept as verification when determining eligibility.

The client's statements regarding relationship, primary caretaker, presence in the home and school attendance for the dependent child (ren) may be accepted. Verification is required only if the individual's statements are inadequate or inconsistent with other information.

Verification requirements for all other eligibility factors are in the appropriate manual items.

Verification Sources

Relationship

- Birth certificate.
- Hospital certificate of birth.
- Official records containing relationship information.
Examples: court, school, church or medical records; marriage certificate; insurance policy. BEM 135 (January 1, 2015) P. 6

BEM 211 also defines primary caretaker as:

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. BEM 211 (January 1, 2015) p.2.

The policy also requires that the Department verify the primary caretaker when questioned or disputed. BEM 211 p.6

The Department based its determination that the children lived with the Claimant upon school records provided by the Claimant. The Department caseworker in charge of Claimant's case and application processing credibly testified that she had no question that the children resided with the Claimant. The Claimant's caseworker attempted to have the mother's caseworker remove the children from her medical assistance group but was unsuccessful. At the request of the Claimant's caseworker, the mother's caseworker had removed the children from the mother's FAP group; however, the mother's caseworker did not do so with regard to the medical group without explanation. The Department, based upon the information in its record system at the time of the application for Medical Assistance, denied the application even though the Claimant's caseworker had information that the children lived with the Claimant and knew and had confirmed that the Claimant was the primary caretaker and that the children in question lived with him. The Medical Assistance application was denied for the reason that the children were open in the mother's case and the Claimant's income was over the income limit for one adult as the children could not be included in the MA group.

Based upon the information available to the Department and the credible testimony of the Claimant's caseworker and the Claimant, the Claimant's October 19, 2014 application for Medical Assistance should not have been denied and the children should have been removed from the mother's MA case. The mother's caseworker could have no basis to continue the children under the mother's case and her failure to remove the children is contrary to the evidence and her prior action removing the children from the mother's FAP group. Department policy requires that if the caseworker had any doubt about who was the primary caretaker, the caseworker is required to verify whether the mother was the caretaker as there was a question about whether the mother had custody and care of the children as the primary caretaker. Based upon the information available to the Department, the Department should have included the Claimant's children in his October 19, 2014 application for Medical Assistance. Its failure to do so, when verification had been provided by the Claimant establishing him as the primary caretaker, requires that the October 19, 2014 application be re-registered and processed with the Claimant as the primary caretaker.

In addition, the Department denied the Claimant's CDC application due to his provider not being currently licensed. The Claimant's provider has currently taken steps to have her license reinstated and the Claimant, once the provider is approved and licensed,

can reapply for CDC. Thus the Department's denial of the CDC application was correct and in accordance with Department policy.

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 denied the Claimant's CDC application as the provider's license was expired.

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 did not act in accordance with Department policy when it denied the Claimant's application for Medical Assistance based upon the fact that he was not a primary caretaker of his three children.

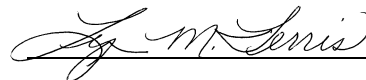
DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED** with regard to the denial of the Claimant's Medical Assistance application.

Accordingly, the Department's decision is **AFFIRMED** with regard to the Department's denial of the Claimant's CDC application.

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. The Department shall re-register the October 19, 2014 Medical Assistance application and process the application to determine eligibility and shall take steps to include the Claimant's children in the Group 2 Medicaid group with the Claimant as the primary caretaker.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/13/2015**

Date Mailed: **4/13/2015**

LMF / cl

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:

[REDACTED]