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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-013835
Issue No.: 2001
Case No.: [redacted]
Hearing Date: September 24, 2015
County: Saginaw

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 telephone hearing was held on September 24, 2015 from Lansing, Michigan. [redacted] (Claimant's daughter-in-law) represented Claimant as Authorized Hearing Representative[1] (AHR) at the hearing. Claimant appeared and provided testimony. [redacted] (Hearing Facilitator) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) program 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. Claimant was active for MA-G2S benefits.

2. Claimant's son served as her Authorized Representative (AR) at all relevant times.

3. On May 12, 2015, the Department mailed Claimant and Claimant's AR a Redetermination (DHS-1010) for review of her MA case. (Exhibit 1, pp 3-8)

4. On June 3, 2015, the Department received the completed Redetermination (DHS-1010). (Exhibit 1, pp 3-8)

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[1] Claimant's son (Edward Christenson) was listed as the AR, but he was unable to attend the hearing and the parties agreed to allow Ms. Christenson to serve as Claimant's AHR during the hearing.

5. On June 18, 2015, the Department mailed Claimant's AR a Quick Note (DHS-100) which indicated, "Your bank statement was received for your redetermination. Unfortunately it is not legible. Could you please send a copy that is legible? Thank you. This information is due 6.29.15." (Exhibit 1, p 9)

6. On July 8, 2015, the Department mailed Claimant's AR a Verification Checklist (DHS-3503) requesting additional information about "bank checking account." (Exhibit 1, pp 10-11)

7. On July 8, 2015, the Department's local office mailed Claimant's AR a Verification Checklist (DHS-3503), which for purposes of MA, requested savings account, checking account information due by July 20, 2015. (Exhibit 1, pp 19-20)

8. On July 17, 2015, the Department mailed Claimant's AR a Health Care Coverage Determination Notice (DHS-1606) which indicated that Claimant, for the period of June 1, 2014 through June 30, 2014, was active for full coverage MA benefits and full coverage for Medicare Savings Program effective July 1, 2015. However, the notice also indicates that Claimant was not eligible for August 1, 2015 ongoing and that Claimant had failed to verify or allow the Department to verify information.[2] (Exhibit 1, pp 21-24)

9. Claimant's AR requested a hearing to dispute the MA closure.

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.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the

[2] The record shows that the Department actually mailed this notice to Claimant's AR twice on the same date. (See Exhibit 1, pp 25-28)

policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

> The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

> The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.
>
> The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

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. Here, the Department representative conceded during the hearing that mistakes were made relative to Claimant's MA case. The record is replete with documentation; however the documents included in the hearing packet were simply not helpful. First of all, the Health Care Coverage Determination Notices (DHS-1606) purportedly mailed to Claimant's AR properly provided Claimant with notice, along with reasons, to explain why her MA case was to be closed. The record contained Case Comments-Summary dated July 8, 2015, provides that client failed to respond to original request for bank statement. MA manually closed. (Exhibit 1, p 36) The comments dated July 16, 2015 also indicate that Claimant's bank statement for First Merit was not received. Then the note says the bank statement was received but was not legible. The note further adds, "Client statement changed to other acceptable as asset verification so MA can be denied. (Exhibit 1, p 36) The purported illegible bank statement was not included in the record. The Department also fails to include any other objective documentation in the record to establish that Claimant's MA case should have been closed due to failure to comply with requested verifications. In addition, there is no evidence in the record that the Department performed an ex parte review[3] before closing Claimant's MA case. At one point the Department representative indicated that she did not believe Claimant was eligible for MA, but that the records were ambiguous.

Based on the substantial, material and competent evidence on the whole record in this case, the Department has failed to show that it acted properly with regard to Claimant's MA case. The DHS-1606s in this record do not clearly indicate that Claimant's MA case was to close, nor does it provide reasons why her MA case should be closed. The record does not even provide the Administrative Law Judge with sufficient evidence to determine whether Claimant was asset eligible for MA benefits during the time in question. The AHR who attended this hearing was unable to provide additional assistance concerning whether Claimant received a DHS-1606 which clearly closed her MA case.

In the instant matter, the Department failed to include sufficient documentation to establish that it acted properly with regard to Claimant's MA case. There are too many questions that remain concerning the manner in which the Department managed Claimant's MA case that were not answered by the objective records. The Department representative who attended the hearing made a good faith effort to assist the Administrative Law Judge during the hearing; however she was unable to provide a proper explanation for how Claimant's MA case was handled. In addition, the hearing

[3] Under BEM 105 (10-1-2014) p 5, an ex parte review (see glossary) 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. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. The review includes consideration of all MA categories.

record in this case simply fell short. Without proper documentation to show how the Department determined Claimant's eligibility for MA, the Administrative Law Judge is unable to evaluate whether the Department accurately determined her MA eligibility at issue in this request for hearing.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

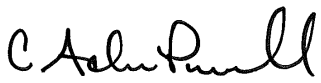
Accordingly, the Department's decision is **REVERSED**.

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. The Department shall initiate a redetermination of Claimant's eligibility for MA benefits going back to June 1, 2015.

2. If, following the redetermination, the Department determines that Claimant was eligible for continuous MA benefits back to June 1, 2015, the Department shall provide Claimant with retroactive and/or supplemental benefits only if policy requires the Department do so.

3. The Department shall notify Claimant of its decision.



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

Date Signed: **9/28/2015**

Date Mailed: **9/28/2015**

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: [redacted]