

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

IN THE MATTER OF:

████████████████████
██████████
████████████████████

MAHS Reg. No.: 15-022941
Issue No.: 2001
Agency Case No.: ██████████
Hearing Date: February 04, 2016
County: Wayne-District 55
(Hamtramck)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner'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 February 4, 2016, from Detroit, Michigan. Petitioner was represented by attorney ██████████. The Department was represented by ██████████, Eligibility Specialist.

ISSUE

Did the Department properly process and close Petitioner's Medicaid (MA) case?

FINDINGS OF FACT

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

1. Petitioner came from ██████████ on a visa authorizing her admission into the U.S. from June 4, 2015 to August 1, 2015 (Exhibit 4).
2. Petitioner was pregnant at the time she arrived, with a September 9, 2015 expected due date.
3. On July 14, 2015, Petitioner applied for MA benefits. She indicated on the application that she was not a U.S. citizen but had eligible immigration status based on an immigration document of an arrival/departure record, I-94, I-94A. She did not respond to the question concerning whether she was a resident of Michigan. (Exhibit 2.)

4. On July 14, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice approving her for full coverage MA for July 1, 2015 ongoing (Exhibit 3).
5. On September 4, 2015, Petitioner gave birth to her daughter in Michigan.
6. On September 25, 2015, the Department's Office of Inspector General (OIG) investigated Petitioner's residency and citizenship for purposes of MA eligibility (Exhibit C).
7. On September 30, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that her MA case was closing effective November 1, 2015 because she was not under 21 or over 65, not pregnant, not a caretaker of a minor child in her home, and not blind or disabled (Exhibit A).
8. On November 16, 2015, Petitioner filed a request for hearing disputing the Department's actions closing her case on the basis that she was not a caretaker of a minor child and contending that she was eligible for MOMS coverage throughout her pregnancy and for 60 days after her delivery and for ESO coverage thereafter (Exhibit 1).

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), Department of Health and Human Services Modified Adjusted Gross Income (MAGI) Related Eligibility Manual (MREM), Department of Health and Human Services Medicaid Provider Manual (MPM), 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.

Petitioner requested a hearing to dispute the type of MA coverage she received between July 1, 2015 and October 31, 2015 and to dispute the closure of her MA case effective November 1, 2015.

An individual is entitled to the most beneficial MA program for which they are eligible. BEM 105 (October 2014), p. 2. In this case, following Petitioner's July 14, 2015 MA

application, the Department approved Petitioner for full-coverage MA under the Healthy Michigan Program (HMP) effective July 1, 2015 (Exhibits D and 3). Although Petitioner was granted coverage under HMP, her medical provider was unwilling to bill Medicaid for services rendered to Petitioner because its interface system showing the Medicaid status of patients showed that Petitioner was identified as a U.S. citizen and the provider had reason to believe Petitioner was not a U.S. citizen.

At the hearing, Petitioner's counsel acknowledged that Petitioner was not a U.S. citizen. She pointed out that Petitioner had not identified herself as a U.S. citizen in her application (Exhibit 2). Rather, it appears that the Department's classification of Petitioner as a citizen was due to agency error.

Petitioner's counsel acknowledges that Petitioner lacked citizenship or qualified alien status to be eligible for full-coverage MA under the HMP program. MREM, § 3.2; MPM, § 1. She argued, however, that, because Petitioner was pregnant at the time of her MA application, she was eligible for coverage under the Maternity Outpatient Medical Services (MOMS) MA program. MOMS entitles a pregnant woman who is eligible for ESO coverage to services for routine prenatal care, labor and delivery, and routine post-partum care. MREM, §§ 3.3, 1.2; MPM, Chap. MOMS, § 1.1. MOMS enrollees are given a Guarantee of Payment for Pregnancy Related Services (DCH-1164) letter, which includes information on eligibility, covered services, billing instructions, etc., to assure providers that the Department will reimburse for pregnancy-related services provided to the beneficiary. MPM, MOMS Chap., § 1.3.

In this case, although Petitioner was not eligible for full-coverage HMP due to her alien status, she was eligible for MOMS coverage, which, based on her pregnancy, was the most beneficial MA program available to her at the time of application. Therefore, the Department erred in processing Petitioner's MA case and providing Petitioner with full-coverage MA coverage under the HMP rather than MOMS coverage.

Petitioner also disputed the closure of her MA case. On September 30, 2015, the Department sent Petitioner a Notice of Case Action closing her MA case effective November 1, 2015 because she was not under 21 or over 65, pregnant, the caretaker of a minor child, blind, or disabled (Exhibit A). At the hearing, the Department acknowledged that Petitioner was the parent caretaker of a minor child, namely the child she had given birth to on September 5, 2015. However, the Department argued that Petitioner's case was nevertheless properly closed because she lacked U.S. citizenship or Michigan residency based on the results of a front-end eligibility (FEE) investigation (Exhibit C). The Department did not act in accordance with Department policy when it failed to properly identify the reason for the closure of Petitioner's MA case. BAM 220 (October 2015), p. 2. Petitioner's counsel pointed out that she was not aware that Petitioner's residency served as the basis for the case closure. Consequently, Petitioner's ability to challenge the closure of her case was prejudiced.

Further, as discussed above, Petitioner's lack of U.S. citizenship would not render her ineligible for MA; it only affected the type of MA she was eligible to receive. Even though Petitioner had authority under her visa terms to be in the U.S. from July 5, 2015 to August 1, 2015 and she stayed in the U.S. beyond the period she was legally authorized, citizenship/alien status is not an eligibility factor for ESO MA. MREM, § 3.2.

Although citizenship/alien status is not an eligibility factor for ESO MA, an individual must meet all other eligibility factors, including residency. MREM, §§ 2.1, 3.2; MPM, § 1.1; BEM 220 (July 2014), p. 2; BEM 125 (June 2015), p. 2; BEM 126 (January 2015), p. 1. For MAGI-related MA policies, such as MOMS, an individual is considered to be a Michigan resident if the individual attests to living in Michigan. MREM, § 2.1. For other MA policies, an individual who is living in Michigan except for temporary absence is a Michigan resident. BEM 220 (July 2014), p. 2.

In this case, Petitioner had a visa permitting her to be in the U.S. and was authorized to be in the country under the terms of the visa. Although the FEE investigation implies that Petitioner, whose visa limited her legal stay in the U.S. to the period between July 5, 2015 and August 1, 2015, did not intend to stay in Michigan at the time of her MA application, there was no evidence presented that she was not living in Michigan at the time of application through the September 2015 FEE investigation date. Therefore, the Department has failed to establish that Petitioner was ineligible for MA at the time of case closure due to lack of residency. While there was evidence at the hearing that Petitioner had left Michigan to go to [REDACTED] the evidence at the hearing did not establish when Petitioner had left the country or that her absence was other than temporary.

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 provided Petitioner with MA coverage other than MOMS and closed her MA case.

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. Reinstate Petitioner's MA case effective November 1, 2015;
2. Convert Petitioner's MA coverage to MOMS effective July 1, 2015 ongoing, and, when she is no longer eligible for MOMS based on post-pregnancy status, to ESO;

3. Allow Petitioner's providers to bill for medical services provided to Petitioner from July 1, 2015 ongoing;
4. Provide Petitioner with timely notice of any negative changes to her MA case.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **2/17/2016**

Date Mailed: **2/17/2016**

ACE / tlf

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]
[REDACTED]
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