

**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.: 15-021848
Issue No.: 2007
Agency Case No.: [REDACTED]
Hearing Date: February 09, 2016
County: Washtenaw-District 20

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 9, 2016 from Lansing, Michigan. [REDACTED] (Petitioner's father and Authorized Hearing Representative (AHR)) represented Petitioner. Petitioner did not appear at the hearing. [REDACTED] (Assistance Payments Worker) and [REDACTED] (Assistance Payments Supervisor) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA) under the MICHild program?

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 (DOB: [REDACTED]) is a minor. [Department Exhibit 1, p. 8].
2. Petitioner was active for MICHild benefits. [Petitioner Exhibit 1, p. 3].
3. On September 17, 2015, the Department's MICHild office sent a letter to Petitioner's father which served as a reminder to renew Petitioner's MICHild benefits. The letter also indicated that if the MICHild renewal is not completed by September 28, 2015, disenrollment will take place and coverage will end on October 31, 2015. [Pet. Exh. 1, p.1].

4. On September 24, 2015, Petitioner's father submitted an online application for health care coverage that was transferred to Bridges from the data collection tool. [Dept. Exh. 1, pp. 6-15].
5. On September 24, 2015, the Department mailed Petitioner's father a Verification Checklist (DHS-3503) which requested income verification on or before October 5, 2015. [Dept. Exh. 1, p. 16].
6. On October 21, 2015, the Department mailed Petitioner's father a Verification of Assets (DHS-20) form and a Verification of Employment (DHS-38) form. [Dept. Exh. 1, pp. 21-24].
7. On October 26, 2015, the MICHild office mailed Petitioner's father a letter that indicated the MICHild coverage was not renewed and that coverage ends on October 31, 2015. [Pet. Exh. 1, p. 3].
8. On October 29, 2015, the Department received the following: a completed and signed DHS-20 form, a completed and signed DHS-38 form, and a letter from University of Michigan Credit Union which provided Petitioner's savings account information. [Dept. Exh. 1, pp. 20-24].
9. As of November 2, 2015, Petitioner's father earned \$ [REDACTED] per month in total income and Petitioner earned \$ [REDACTED] per month in total income. [Dept. Exh. 1, p. 19].
10. On November 2, 2015, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606)¹ which indicated the following:
 - a. Petitioner was eligible for full coverage from "08/01/2015-08/31/2015." [Dept. Exh. 1, p. 4].
 - b. Petitioner was not eligible for "09/01/2015- Ongoing." [Dept. Exh. 1, p. 4].
 - c. "This individual has been referred to MICHILD." [Dept. Exh. 1, p. 4].
 - d. Annual Income: \$ [REDACTED] [Dept. Exh. 1, p. 5].
 - e. The household size income limits were provided. [Dept. Exh. 1, p. 5].
11. On November 12, 2015, Petitioner's father requested a hearing because "the renewal process for MICHild assistance has been mishandled and delayed resulting in a loss/lapse of coverage for medical assistance." [Dept. Exh. 1, p. 3].
12. On November 24, 2015, the MICHild office sent Petitioner a letter which indicated that it received an application and that it appears that her children qualify for

¹ The Department only included pages 1 and 2 of the DHS-1606 as an exhibit. Pages 3 and 4 were missing.

MiChild coverage beginning January 1, 2016. The letter further noted that MiChild will become a Medicaid program on January 1, 2016 and that Petitioner's application was sent to the Michigan Department of Health and Human Services for processing. [Pet. Exh. 1, p. 4].

13. On November 30, 2015, the MiChild office sent Petitioner's father a letter that indicated Petitioner will be disenrolled from MiChild due to a "voluntary request for disenrollment" effective December 31, 2015. [Pet. Exh. 1, p. 8].

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)² 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.

MiChild is a FIP-related Medicaid Expansion program for children who are under 19 years of age (U-19) and who have no other health coverage. BEM 130 (1-1-2016), p. 1.

MiChild income eligibility is determined according to the rules of the Modified Adjusted Gross Income (MAGI) formula. BEM 130, p. 1.

- MiChild income eligibility for children aged 0-1 year ranges from 195-212 percent of the Federal Poverty Level (FPL). BEM 130, p. 1.
- MiChild income eligibility for children 1 through 18 years of age ranges from 160-212 percent of the FPL. BEM 130, p. 1.

Other eligibility criteria for MiChild is the same as Healthy Kids with the exception of comprehensive insurance and premium payments. BEM 130, p. 1. Enrollment in other comprehensive health insurance plans is cause for denial and/or termination of MiChild. Children who may be eligible for State Health Insurance coverage based on a family member's active employment by a state or local government are not eligible for MiChild. BEM 130, p. 1. The eligibility for MiChild, eligibility begins the first day of the month of

² MA is also known as "Medicaid."

application. The 3-month retroactive period applies unless the beneficiary was enrolled in other comprehensive medical insurance during that time. BEM 130, p. 1.

Presumptive eligibility is determined based on income reported at the time of application. BEM 130, p. 1. Determination of presumptive eligibility must be completed within one business day of the application. BEM 130, p. 1. Presumptive eligibility will be determined for a child whose application is filed online, by a trained qualified entity. BEM 130, p. 1. Qualified entities include public health department employees, tribal and rural health clinics, and eligibility counselors at health clinics designated by Michigan Department of Health and Human Services (MDHHS) and/or Medical Services Administration (MSA) to process applications. BEM 130, p. 1.

Presumptive eligibility is effective the date the eligibility is determined by the qualified entity. BEM 130, p. 2. Presumptive eligibility ends when the regular eligibility becomes effective based on a determination by local office staff, or if required verifications (for example, citizenship requirements) are not received. BEM 130, p. 2. A regular eligibility determination must be made within 60 days of the date of the presumptive eligibility determination. BEM 130, p. 2. Children with presumptive eligibility receive the full Medicaid benefits. BEM 130, p. 2. There is no limit to the number of times a person may apply for presumptive eligibility however actual eligibility is limited to one period of presumptive eligibility during any consecutive 12 month period. BEM 130, p. 2.

The following are the nonfinancial factors that must be met for MIChild eligibility:

The person must be under age 19. The MA eligibility factors in the following items must be met:

- BEM 220, Residence.
- BEM 221, Identity.
- BEM 223, Social Security Numbers.
- BEM 225, Citizenship/Alien Status.
- BEM 255, Child Support.
- BEM 257, Third Party Resource Liability.
- BEM 265, Institutional Status.
- BEM 270, Pursuit of Benefits. BEM 130, pp. 3-4.

Income eligibility is determined according to MAGI rules. Countable income as determined by MAGI rules cannot exceed 212 percent of the federal poverty level. BEM 130, p. 3.

Beneficiaries remain eligible for 12 months of continuous eligibility for MIChild unless the person meets one of the following criteria:

- Reaches age 19.
- Moves out of state.

- Is ineligible due to Institutional Status; see BEM 265.
- Dies.
- Fails to pay the monthly premium.
- Is enrolled in other comprehensive insurance. BEM 130, pp. 3-4

An ex parte review³ 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. BEM 130, p. 4. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. BEM 130, p. 4. The ex parte review includes consideration of all MA categories; see BAM 115 and 220. BEM 130, p. 4.

MICChild applicants and beneficiaries are entitled to full hearing rights. Individuals have the right to contest a department decision affecting Medicaid eligibility whenever they believe the decision is incorrect, or when their application is not acted upon with reasonable promptness. BEM 130, p. 4.

According to BAM 600 (10-1-2015), page 9, the Department must determine the nature of the complaint. This policy also describes the Department's written hearing summary and provides as follows:

The hearing summary, or highlights of it, may be read into the record at this time. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the department's position. **Always** include the following in planning the case presentation:

- **An explanation of the action(s) taken.**
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- **The facts which led to the conclusion that the policy is relevant to the disputed case action.**
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights.

See BAM 600, pp. 35-36. [Emphasis added].

³ A determination made by the department without the involvement of the recipient, the recipient's parents, spouse, authorized representative, guardian, or other members of the recipient's household. It is based on a review of all materials available to the specialist that may be found in the recipient's current Medicaid eligibility case file. Bridges Program Glossary (BPG) (10-1-2015), p. 24.

In the instant matter, the Department representatives who testified at the hearing were confused about the sequence of events that gave rise to the request for hearing. The Department representatives stated that they were not the individuals who prepared the hearing packet and were unable to fully explain precisely what took place in this case. According to the hearing summary, Petitioner's MICHild case closed due, in part, to excess income. Petitioner's AHR, on the other hand, contends that the Department's November 2, 2015 MICHild determination is incorrect and that his daughter (Petitioner) is entitled to MICHild coverage for the month of November, 2015.

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. Based upon a fair reading of BAM 600, the Department bears the burden of production with regard to the document evidence giving rise to the request for hearing.

Placing the burden of proof on the Department is not 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.

Unfortunately, the Department representative who attended the hearing were unable to clearly explain the sequence of events that occurred in this case nor were they able to explain the rationale for the Department's decision to close Petitioner's MIChild benefits. The records contained in the packet only yielded more questions than it provided answers. For example, the Department failed to include sufficient documentation to demonstrate the reason for the delay from the time the MIChild renewal application was received (September 24, 2015) to the time it was eventually processed (November 2, 2015). In addition, the Department did not include supportive documentation to show how Petitioner was excess income when she was clearly within the MAGI household income limits based on the chart. [Dept. Exh. 1, p. 5]. Without sufficient documentation in the record, coupled with the fact that the Department representatives were unfamiliar with the case, the undersigned is unable to evaluate whether the Department accurately determined Petitioner's MIChild eligibility. The Department must include a hearing summary that clearly describes the Department action and, at the very least, attach relevant documentation related to the request for hearing. The Department did not do so here. 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.

Despite the lack of evidence, the documents contained in the record show that the Department closed Petitioner's MIChild benefits based, in part, on excess income. As indicated above, the DHS-1606, which shows that Petitioner's annual household income was \$6,228.00, does not exceed the \$22,951.50 annual income limit contained on the chart. [Dept. Exh. 1, p. 5]. This appears to be an error. In addition, there was no evidence in the record to support the notion that Petitioner voluntarily requested to be disenrolled from the MIChild program. This also appears to be an error.

With regard to the request for retroactive MIChild coverage from November, 2015, this Administrative Law Judge lacks jurisdiction to provide the requested relief. Policy allows the Administrative Law Judge to issue a final decision as to whether the Department followed policy in a particular circumstance. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals.

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 closed Petitioner's MIChild benefits.

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 the recertification and reprocessing of Petitioner's MIChild renewal application dated September 24, 2015.
2. The Department shall initiate a redetermination as to whether Claimant is entitled to retroactive and/or supplemental MIChild benefits; including November, 2015, to the extent permissible by applicable policy.
3. The Department initiate the process to provide Petitioner with a written notification of its decision.
4. If necessary, the Department shall request a ticket to implement the above.

IT IS SO ORDERED.



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

Date Mailed: 2/11/2016

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:

