



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 13, 2016
MAHS Docket No.: 16-004970

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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; 42 CFR 431.200 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on June 1, 2016 and the hearing was continued on June 28, 2016. Petitioner was represented by [REDACTED]. Petitioner was not personally present. The Department of Health and Human Services (Department), was represented by Assistant Attorney General [REDACTED]. Eligibility Specialist [REDACTED] testified as a witness on behalf of the Department. Department Exhibits 1-14, were admitted. The record was closed at the conclusion of the hearing. No exhibits were offered by Petitioner.

ISSUE

Whether the Department properly determined the correct divestment penalty period?

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 April 30, 2015, Petitioner applied for Medicaid. [Dept. Exh. 1].
2. On November 19, 2015, Petitioner's April 30, 2015 Medicaid application was located, retagged and registered. [Dept. Exh. 3].
3. On January 3, 2016, the Department issued a Health Care Coverage Determination Notice approving Petitioner for Medicaid from April 1, 2015 through April 30, 2015 with a patient pay amount of [REDACTED] a monthly

patient pay amount of [REDACTED] from December 1, 2015 through January 31, 2016; and beginning February 1, 2016 ongoing, a monthly patient pay amount of [REDACTED]. The Notice explained that Petitioner was not eligible for Medicaid from May 1, 2015 through November 30, 2015 because she had excess assets. [Dept. Exh. 10, pp 6-9].

4. On April 5, 2016, Petitioner's Authorized Hearing Representative submitted a Request for Hearing contesting the calculation of the penalty period. [Dept. Exh. 10, pp 2-5].

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/Medicaid) 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 Medicaid program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Medicaid-only eligibility is determined on a calendar month basis. BEM 105, p 2. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. *Id.*

Divestment results in a penalty period in Medicaid, not ineligibility. BEM 405, p 1 (7/1/2015). During the penalty period, Medicaid will not pay for long-term care services. *Id.*

Petitioner contended that the Department did not meet their Standard of Promptness in processing Petitioner's Medicaid application. Petitioner's Medicaid application was submitted on April 30, 2015. The Department had 45 days to certify program approval or denial of the Medicaid application. Due to a Department error, Petitioner's Medicaid application was not registered until November 15, 2015. The Department admitted that they failed to meet the Standard of Promptness in the Hearing Summary. The Department did indicate that Petitioner could have asked for a hearing at any time after the 45 day requirement because MAHS (Michigan Administrative Hearing System) may grant a hearing for a delay of any action beyond standards of promptness. BAM 600, p 4 (10/1/2015). Therefore, this issue is not in dispute for purposes of this hearing.

The law provides that a disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2). In this case, the Department and the Petitioner agreed that the correct divestment period in this case was June, 2015 through November 2015. In other words, Petitioner should have been approved for Medicaid coverage for the months of April and May, 2015, and December, 2015 through May 30, 2016.

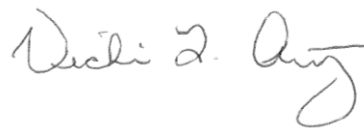
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not properly calculate the correct divestment period.

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. Issue a HelpDesk ticket to correct the divestment period to June, 2015 through November, 2015.
2. Approve Petitioner's Medicaid coverage for the time period of April and May, 2015, and December, 2015 through May 30, 2016, per agreement of the parties.
3. Issue a new Health Care Coverage Determination Notice reflecting the above changes.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the

request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

[REDACTED]

[REDACTED]
[REDACTED]
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