



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 22, 2016
MAHS Docket No.: 16-006951
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on July 6, 2016, from Flint, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. [REDACTED], mother, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist (ES) and back up Hearing Facilitator.

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-20. The Hearing Decision from MAHS Docket No. 16-004125 was admitted as Exhibit 1, pp. 1-5.

ISSUES

Did the Department properly re-determine Petitioner's eligibility for Medical Assistance (MA) retroactive to December 7, 2015?

Did the Department properly re-determine Petitioner's eligibility for the Medicare Savings Program (MSP), retroactive to December 7, 2015?

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 December 7, 2015, Petitioner submitted an assistance application, in part applying for Health Care Coverage. (Exhibit A, pp. 6-18)

2. A May 23, 2016, Hearing Decision (MAHS Docket No. 16-004125) was issued, in part, ordering the Department to re-determine Petitioner's eligibility for MA and MSP back to December 7, 2015. (Exhibit 1, pp. 1-5)
3. The Department has approved Petitioner for MSP retroactive to December 2015. (Exhibit A, p. 19)
4. Petitioner has a deductible for her MA coverage, which ranges from \$ [REDACTED] to \$ [REDACTED] for each month from December 2015 through present. (ES Testimony)
5. There is no evidence that Petitioner was issued a written case action notice of the re-determined MA and MSP eligibility determinations.
6. On May 19, 2016, Petitioner filed a hearing request contesting the Department's MA deductible and MSP determinations. (Hearing Request)

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.

BAM 600 addresses the deadlines for requesting a hearing:

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days.

BEM 220, October 1, 2015, p. 6.

Petitioner's May 19, 2016, hearing request specifically stated she was requesting a hearing regarding the MSP and MA deductible. Petitioner also listed the dates of several notices of case action, December 15, 2015, January 5, 2016, and March 16, 2016. (Hearing Request) There would be no jurisdiction to address the December 15, 2015, and January 5, 2016, written notices of case action because the May 19, 2016, hearing request was filed after the 90 day deadline.

Similarly, while Petitioner's testimony indicated there are contested issued with MSP going back to 2012, this was not the time period indicated on the Hearing Request and these months would be well beyond the 90 day deadline for filing a hearing request.

Further, the evidence establishes that the May 23, 2016, Hearing Decision already addressed notices of case action dated between December 2015 and May 2016. In part, the Hearing Decision ordered the Department to re-determine Petitioner's eligibility for MA and MSP back to December 7, 2015. (Exhibit 1, pp. 1-5) Accordingly, there is only jurisdiction to review the re-determined eligibility case actions.

BAM 220 addresses notice of case actions:

Upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. The notice of case action is printed and mailed centrally from the consolidated print center.

BAM 130, April 1, 2016, p. 2.

The Department has approved Petitioner for MSP retroactive to December 2015. (Exhibit A, p. 19) Petitioner has a deductible for her MA coverage, which ranges from \$█ to \$█ for each month from December 2015 through present. (ES Testimony) However, there is no evidence that Petitioner was issued a written case action notice of the re-determined MA and MSP eligibility determinations.

BEM 545 addresses MA group 2 income eligibility:

Income eligibility exists for the calendar month tested when:

- There is no excess income.
- Allowable medical expenses (defined in **EXHIBIT I**) equal or exceed the excess income

When **one** of the following equals or exceeds the group's excess income for the month tested, income eligibility exists **for the entire month**:

- Old bills (defined in EXHIBIT IB).
- Personal care services in clients home, (defined in Exhibit II), Adult Foster Care (AFC), or Home for the Aged (HA) (defined in EXHIBIT ID).

- Hospitalization (defined in EXHIBIT IC).
- Long-term care (defined in EXHIBIT IC).

When **one** of the above does **not** equal or exceed the group's excess income for the month tested, income eligibility begins either:

- **The exact day of the month** the allowable expenses **exceed** the excess income.
- **The day after the day of the month** the allowable expenses **equal** the excess income.

In addition to income eligibility, the fiscal group must meet all other financial eligibility factors for the category processed. However, eligibility for MA coverage exists only for qualified fiscal group members. A qualified fiscal group member is an individual who meets all the nonfinancial eligibility factors for the category processed.

BEM 545, October 1, 2016, p. 1.

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, pp. 35-36 (April 1, 2015) 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 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 p. 36. 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.

In this case, the Department has not provided sufficient evidence to review the MA deductible determinations. There were no budgets or other documentary evidence included in the Department's hearing exhibits to show how the deductible amounts were calculated. Further, the testimony of the parties indicates Petitioner submitted documentation of medical expenses totaling about \$ [REDACTED], which were used for a Food Assistance Program (FAP) budget for one month, but it does not appear that they were ever applied to the MA deductible case. (Testimony of Petitioner and ES)

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 re-determined Petitioner's MA and MSP eligibility retroactive to December 7, 2015.

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. Re-determine Petitioner's MA and MSP eligibility retroactive to December 7, 2015, in accordance with Department policy, which would include issuing written notice of the new determination(s) for benefit periods starting December 7, 2015.

CL/mc



Colleen Lack
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

DHHS

[Redacted]

Petitioner

[Redacted]