



RICK SNYDER  
GOVERNOR

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

MIKE ZIMMER  
DIRECTOR

[REDACTED]

Date Mailed: April 14, 2016  
MAHS Docket No.: 16-001510  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Kevin Scully**

**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. After due notice, telephone hearing was held on April 07, 2016, from Lansing, Michigan. Participants on behalf of Petitioner included his authorized hearing representative [REDACTED] of [REDACTED] [REDACTED] represented the Department of Health and Human Services (Department).

**ISSUE**

Did the Department of Health and Human Services (Department) properly deny the Petitioner's Medical Assistance (MA) application?

**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 June 25, 2015, the Department received the Petitioner's application for Medical Assistance (MA) benefits. Exhibit A, p 8.
2. The Petitioner receives monthly Retirement, Survivors, and Disability Insurance (RSDI) benefits in the gross monthly amount of \$ [REDACTED] Exhibit A, p 16.
3. The Petitioner receives monthly Worker's Compensation benefits in the gross monthly amount of \$ [REDACTED] Exhibit A, p 16.
4. On August 10, 2015, the Department denied the Petitioner's Medical Assistance (MA) application. Exhibit A, p 12.

5. On November 20, 2015, the Department provided notice to the Petitioner's Authorized Representative that his application for Medical Assistance (MA) had been denied.
6. The Petitioner's total monthly income exceeds the limit to receive Medicare Savings Program (MSP) benefits under any category. Exhibit A, p 15.
7. The Petitioner is not eligible for Medical Assistance (MA) under the Healthy Michigan Plan (HMP) as a Medicare eligible person.
8. The Department asserted that the Petitioner was not eligible for Medical Assistance (MA) based on his income.
9. The Department asserted that the Petitioner was not eligible for Medical Assistance (MA) based on excess assets.
10. The Department asserted that the Petitioner was not eligible for Medical Assistance (MA) based on his failure to verify his assets.
11. The Department failed to present sufficient evidence or testimony supporting the denial of Medical Assistance (MA).
12. On January 28, 2016, the Department received the Petitioner's request for a hearing.

### **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.

Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income. Department of Health and Human Services Bridges Eligibility Manual (BEM) 105 (October 1, 2014), p 2.

On June 25, 2015, the Department received the Petitioner's MA application. On August 20, 2015, the Department denied the Petitioner's MA application. On November 20, 2015, the Department notified the Petitioner's Authorized Representative of the denial of MA benefits.

The reasons for the Department's denial of his MA application are unclear based on the hearing record. The Department initially asserted that the denial was based on his income. The Department then asserted that the denial was either based on excess assets or the failure to provide verification of his countable assets.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. 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 on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

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.

*McKinstry*, 428 Mich at 93-94, quoting *McCormick*, *Evidence* (3d ed), Sec. 336, p. 946.

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 denied the Petitioner's application for Medical Assistance (MA) benefits.

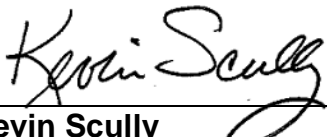
### **DECISION AND ORDER**

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. Initiate a determination of the Petitioner's eligibility for Medical Assistance (MA) as of June 25, 2015.
2. Provide the Petitioner with written notice describing the Department's revised eligibility determination.
3. Issue the Petitioner any retroactive benefits he may be eligible to receive, if any.

KS/las

  
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**Kevin Scully**  
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

**Counsel for Complainant**

[REDACTED]

**DHHS**

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]