



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: May 18, 2016  
MAHS Docket No.: 16-004256  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 3-way telephone hearing was held on May 9, 2016, from Detroit, Michigan. Petitioner did not appear and was represented by an authorized hearing representative (AHR), [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

### **ISSUES**

The first issue is whether MDHHS issued proper notice of Petitioner's Retroactive Medicaid Application.

The second issue is whether Petitioner's AHR is entitled to an administrative order instructing MDHHS how to reprocess Petitioner's 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 [REDACTED], Petitioner's AHR submitted a Retroactive Medicaid Application to MDHHS which requested MA benefits for December 2013.
2. On [REDACTED], MDHHS emailed Petitioner's AHR to inform Petitioner's AHR that a previously issued administrative hearing decision (Exhibit 1, pp. 1-13) determined Petitioner was not disabled for December 2013.

3. On [REDACTED], Petitioner's AHR requested a hearing to dispute, an alleged failure by MDHHS to process Petitioner's application, and to request MDHHS to make a new finding of disability for Petitioner's Medicaid eligibility for December 2013.

### **CONCLUSIONS OF LAW**

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's AHR requested a hearing to dispute an alleged failure by MDHHS to process Petitioner's Medicaid eligibility for December 2013. It was not disputed that Petitioner submitted a retroactive Medicaid Application to MDHHS on November 5, 2015.

The DHS-3243, Retroactive Medicaid Application, is used along with the DHS-4574 or DCH-1426 for retro MA applications. BAM 110 (July 2015), p. 4. Only one DHS-3243 is needed to apply for one, two or three retro MA months; BAM 110. *Id.*

[For all programs,] 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. BAM 220 (October 2015), p. 2. A notice of case action must specify the following (see *Id.*): the action(s) being taken by the department, the reason(s) for the action, the specific manual item which cites the legal base for an action or the regulation or law itself, an explanation of the right to request a hearing, [and] the conditions under which benefits are continued if a hearing is requested. The notice of case action is printed and mailed centrally from the consolidated print center. *Id.*

It was not disputed that Petitioner would not be approved for Medicaid for December 2013 because of a previous determination of disability. It was also not disputed that MDHHS was informed of the decision by email. During the hearing, Petitioner's AHR did not concede the email served as proper notice. The email was not presented, but it is presumed to have not included any policy sections justifying a failure to process. MDHHS could not explain why mailed notice was not issued. Based on presented evidence, it is found MDHHS failed to issue proper notice of Petitioner's request for retroactive MA benefits. Accordingly, MDHHS is found not to have processed Petitioner's Retroactive Medicaid Application.

Petitioner's AHR contended MDHHS should be ordered to do more than to provide proper notice of Petitioner's MA benefit request. Petitioner's AHR contended MDHHS should be ordered to consider whether Petitioner was disabled in December 2013.

Petitioner's argument was procedurally unpersuasive. Administrative orders are intended to undo already performed improper actions by MDHHS. Administrative orders were not intended to anticipate improper actions. Until MDHHS takes an improper action in processing Petitioner's application, no administrative order can be drafted.

Petitioner's argument was also substantively unpersuasive. If MDHHS should be ordered how to reprocess Petitioner's application, MDHHS would be ordered to mail Petitioner's AHR a Benefit Notice denying MA for December 2013 based on res judicata. Res judicata is a concept precluding parties from pursuing a matter which was fully addressed by a competent court.

MDHHS presented a Hearing Decision (Exhibit 1, pp. 1-13). The administrative decision determined Petitioner was "not disabled" for the benefit month of December 2013. Presumably, the administrative decision was not timely appealed because Petitioner's AHR is attempting to circumvent the decision by submitting a new application. The originally issued administrative decision should serve as a final determination of disability, barring MDHHS policy stating otherwise.

Petitioner's AHR contended that Petitioner's SSA approval, beginning January 2014, partially justifies a new determination of disability. Petitioner's AHR contended BEM 815 (actually BAM 815) justifies a new determination because Petitioner has new medical evidence. Petitioner's AHR contended BAM 130 and BEM 160 (presumed to be BEM 260) mandate MDHHS to request new medical evidence from Petitioner. None of Petitioner's arguments justify disregarding principles of res judicata.

It is found MDHHS issued improper notice of Petitioner's Retroactive Medicaid Application. It is further found Petitioner is entitled to no further remedy than issuance of a proper written notice of denial.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly issued written notice of not processing Petitioner's Retroactive Medicaid Application. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Register Petitioner's Retroactive Medicaid Application dated [REDACTED];  
and
- (2) Process Petitioner's application subject only to the finding that MDHHS must mail written notice and cite res judicata as a basis for denial of Petitioner's application.

The actions taken by MDHHS are **REVERSED**.

CG/hw



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**Christian Gardocki**  
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]

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]