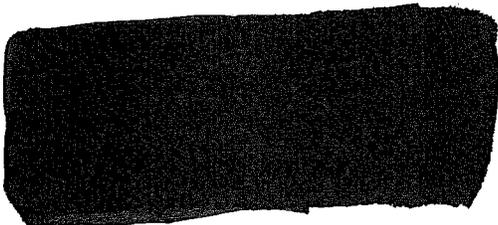


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LP Bldg.
57 Howard Avenue
Cranston, RI 02920
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TDD # (401) 462-3363

Date: July 1, 2014

Docket # 14-154
Hearing Date: June 9, 2014



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided in your favor. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**THE MEDICAID POLICY MANUAL
SECTION: 0376 Overview of MA**

The facts of your case, the Agency policy, and the complete Administrative Decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant in c/o your Attorney), and Agency representatives Gina Marie DeBartolo, Diane Nawrocki, and Tom Conlon.

Present at the hearing were: Your Attorney and Agency representative Diane Nawrocki.

ISSUE: Was the appellant given proper and accurate notification of the Agency's findings relative to her April 1, 2012 application for medical assistance (MA)?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:**The Agency representative testified:**

- The appellant submitted an application for MA in April 2012.
- The appellant was a Nursing Home resident at that time.
- The April 2012 application was initially denied but that denial was subsequently rescinded during an appeal process.
- Prior to the denial being rescinded, the appellant submitted a second LTC MA application in October 2012 which was approved.
- Because the Agency had already approved MA coverage as of October 1, 2012, the only way to approve the additional eligibility was to enter an ISLA (island of eligibility) into the computer system.
- On December 2, 2013 the Agency issued a new notice of MA eligibility for the time period from April 1, 2012 through September 30, 2012.
- The December 2, 2013 notice informed the appellant of her MA eligibility from April 1, 2012 through September 30, 2012 but because eligibility had already begun, the system approved the additional MA as retro eligibility and the notice cited that policy.
- An ISLA does not generate the type of notice that the appellant is looking for and does not allow the Agency to add any additional explanation to the notice.
- The December 2, 2013 notice also informed the appellant that she was responsible to pay a share of her medical expenses and that the money was payable to her health care provider, such as the nursing home or homemaker agency that was assisting her, and that share began in May. This therefore provided the appellant with notice that there was a LTC MA eligibility determination.
- The appellant also received a DHS LTC 167 which states that there was a period of ineligibility for payment of LTC services. It specifically says that there was an uncompensated transfer in the amount of \$10,000.00 and that a period of ineligibility begins April 1, 2012 and it runs for 1 month and 5 days. The LTC 167

therefore notified the appellant that the Agency was not going to pay for LTC/NH payments between April 1, 2012 and May 5, 2012.

- The December 2, 2013 MA eligibility letter also provided notification that the Agency began covering LTC services in May because it talks about a share to pay the NH beginning in May.
- ~~The worker also added a handwritten note on the bottom of the LTC 167 stating that the LTC pickup date was 5/6/12, which means that the Agency starts the authorization to pay the NH beginning May 6, 2012.~~
- She is unable to generate a notice on the computer the way the appellant wants it for the time period from April to September 2012.
- She has no knowledge of any other offline notices, other than the LTC 167, that could be used to notify the appellant of eligibility or ineligibility.

The appellant's Attorney presented:

- The December 2, 2013 MA eligibility notice does not accurately reflect the MA eligibility that the appellant has been granted and has received.
- The appellant is eligible for R.I. MA under the rules of LTC program from April 1, 2012 through September 30, 2012, except for the 1 month and 5 day period of ineligibility she incurred due to a transfer penalty.
- Since the appellant is otherwise eligible for MA under the rules of LTC effective April 1, 2012, that is when the penalty would start and the LTC pickup/payment for NH bill would be on May 6, 2012.
- The appellant's MA eligibility is based on her April 2012 application and is not retroactive in nature pursuant to DHS code 0310, which is indicated in the December 2, 2013 notice of eligibility.
- The LTC 167 is a letter of denial informing the appellant that she is not eligible for LTC payments for one month and days beginning April 1, 2012 but it does not indicate that the appellant was otherwise eligible for MA.
- The appellant's October 2012 eligibility notice is much clearer. It clearly states that based on her MA application for access to institutional LTC services, she is eligible for MA as of October 1, 2012 under the rules of the LTC program and in addition to that it tells her she is eligible for MA.
- While the parties currently involved in this matter may know what the appellant's eligibility or ineligibility is, a third party, now or in the future, might not be able to

determine that by looking at the notices provided to the appellant.

- The appellant deserves and has a right to a correct and accurate notice that reflects the actions that were taken by the Agency on her behalf and the policy that was relied on when making their decisions.
- The Agency has indicated that there are constraints with the Agency's computer system, so if the computer cannot generate an accurate notice then an alternative means of generating an accurate and appropriate notice may need to be utilized.

FINDINGS OF FACT:

- The appellant applied for Medical Assistance (MA) in April 2012 as an institutionalized individual.
- The appellant's April 2012 MA application was initially denied by the Agency.
- The appellant appealed the denial of her April 2012 application.
- While the appellant's appeal was pending, she submitted another MA application in October 2012 as an institutionalized individual.
- The appellant's October 2012 application was approved on February 4, 2013.
- The Agency subsequently rescinded the denial of the Appellant's April 2012 MA application and on December 2, 2013 issued a new notice of MA eligibility for the time period from April 1, 2012 through September 30, 2012.
- The appellant's attorney submitted a request for hearing, received by the Agency on January 7, 2014.
- Administrative Hearings scheduled for March 17, 2014, April 7, 2014, and April 28, 2014 were all rescheduled at the request of the appellant's attorney.
- An Administrative Hearing was convened on June 9, 2014.
- The appellant is eligible for MA from April 1, 2012 through September 30, 2012 under the rules governing MA eligibility for institutionalized individuals.
- The appellant is ineligible for payment of LTC/Nursing Home services for the time period from April 1, 2012 through May 5, 2012.

- The appellant is eligible for payment of LTC/Nursing Home services effective May 6, 2012.

CONCLUSION:

The issue to be decided is whether the appellant was given proper and accurate notification of the Agency's findings relative to her April 1, 2012 application for medical assistance (MA).

There is no dispute that in April 2012 the appellant submitted an application for MA as an institutionalized individual residing in a nursing home (NH). The Agency initially denied that application/request for MA and the appellant filed an appeal of that denial. During the appeal process, the Agency rescinded the initial denial of the April 2012 application. Prior to the Agency rescinding the denial, the appellant had submitted another MA application in October 2012 as an institutionalized individual residing in a NH and the Agency approved that application.

In April 2012, the appellant submitted an MA application to request MA and MA payment for NH services. As a resident of a NH, the appellant is considered an institutionalized individual for the purposes of Medicaid. A full review of the Medicaid policy finds that the eligibility rules for institutionalized individuals differ from the eligibility rules for community residents in several respects and further stipulate that a certain sequence of eligibility determinations must be made relative to an applicant who is institutionalized. Per policy, the Agency is first required to determine the applicants MA eligibility using the MA rules for institutionalized individuals. Once MA eligibility has been determined, the Agency must then determine whether any resource transfers occurred and how such transfers affect the applicant's eligibility for MA payment of Long Term Care (LTC) services, such as payment for NH services. Once an applicant has been found eligible for both MA and MA payment of NH services, the Agency must then determine the amount the individual must pay towards the cost of their NH care each month. Policy relative to LTC MA notices further stipulates that the Agency must notify the applicant in writing of the Agency's decisions regarding MA eligibility, eligibility or ineligibility for NH payments, and the individuals monthly cost share, but acknowledges that due to the complex series of decisions that must be made relative to institutionalized applicants, supplemental notices/attachment must be utilized along with the Agency's system generated MA notices. The record establishes that the Agency used a LTC 167 notice in conjunction with a system-generated notice to inform the appellant of her eligibility and/or ineligibility relative to her April 2012 application for MA and MA payment of NH services.

There is no dispute that the appellant has been found MA eligible as an institutionalized individual effective April 1, 2012, based on an application she submitted in April 2012. There is also no dispute that due to a transfer penalty, the appellant was ineligible for MA payment of NH services from April 1, 2012 through May 5, 2012, but that eligibility

for MA NH payment was effective May 6, 2012 with a monthly cost share of \$1,788.17 beginning with the month of May 2012. The appellant argues that the system-generated notice of MA eligibility issued by the Agency on December 2, 2013, neither alone or in combination with the LTC MA Letter of Denial (LTC-167) issued by the Agency on December 3, 2013, accurately reflects the MA eligibility that the appellant is eligible for and has been granted. The appellant specifically argues that the notice not only fails to inform the appellant that she was MA eligible from April 1, 2012 through September 30, 2012 under the rules of LTC, but it indicated that her approved MA eligibility was retroactive in nature and based on the MA rules for retroactive eligibility. The appellant therefore requests that a corrected notice be issued that accurately reflects the Agency's findings and the MA that she has been granted.

The Agency argues that they are unable to issue a notice through their computer system that says exactly what the appellant's attorney wants it to say because of the particular circumstances of this case and the manner in which the Agency had to process the appellant's MA eligibility for the time period from April 1, 2012 through September 30, 2012. Specifically, the Agency testifies that since the appellant had already been approved for MA as of October 1, 2012 based on her October application, they had to create an island or period of eligibility in the system for the time period beginning with her April application up until the date of her already approved eligibility. The Agency testifies they had no control over and/or ability to alter the December 2, 2013 system-generated notice of eligibility which resulted from that manner of processing. The Agency argues that despite the fact that the system generated notice indicated that the appellant had been found eligible for retroactive MA, the two notices, the December 2, 2013 notice of MA eligibility and the December 3, 2013 notice of LTC MA denial, in combination, provide the appellant with sufficient notice of the Agency's actual findings. The Agency points to the fact that the LTC 167 notice acknowledges an application for LTC MA and despite informing the appellant that she was ineligible for LTC MA from April 1, 2012 through May 5, 2012, the fact that the system generated notice informs her that she must pay towards the cost of her NH care beginning with the month of May 2012 thereby confirms that she had been approved for LTC MA payments effective May 6, 2012.

A full review of the record finds that while the Agency did provide written notification to the appellant, as required, informing her of her MA eligibility, her ineligibility for MA payment of LTC/NH services due to a transfer penalty, and her monthly cost share towards the cost of her NH care, they failed to accurately notify her as to the basis of her MA eligibility. A review of MA policy relative to retroactive MA coverage finds very specific eligibility criteria for such coverage, which do not pertain to the appellant and are clearly different than the rules for MA eligibility for institutionalized individuals which the Agency actually used to determine the appellant's eligibility for the time period from April 1, 2012 through September 30, 2012. As the appellant's application was submitted in April 2012 and the Agency processed that application and determined the appellant's eligibility based on the MA rules governing eligibility for institutionalized individuals, the December 2, 2013 system generated notice of MA eligibility is clearly

incorrect. While the system-generated notice and the LTC 167 in combination might imply that MA was approved from April 1, 2012 through September 2012 based on MA rules for institutionalized individuals, and that LTC MA payment for NH services was approved effective May 6, 2012, there is sufficient error and/or omissions in the system generated notice to find that the Agency has failed to sufficiently and accurately inform the appellant of her eligibility for the MA coverage for which she applied for in April 2012. While the Agency offers an explanation as to how and why the notice was generated incorrectly and claims to have no knowledge of any means to generate a correct and/or more accurate notice, either through the system or through an offline supplemental notice, the Agency has offered no testimony or evidence that they have taken any steps to inquire of the Agency's technology support unit as to available means or ability to make corrections to the system-generated notice and/or made any inquiries to the Department Administration as to alternative means to provide a correct notice.

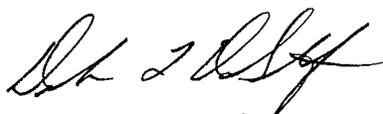
In conclusion, the Agency has determined, based on a MA application submitted by the appellant in April 2012, that she is MA eligible effective April 1, 2012 under the MA rules governing MA eligibility for institutionalized individuals, that she is ineligible for MA payment of LTC/NH services for a period of one month and five days, from April 1, 2012 through May 5, 2012 due to a transfer of resources, and that she is eligible for MA payment of LTC/NH services effective May 6, 2012, with a monthly cost share requirement of \$1,788.17 beginning with the month of May 2012. The Agency failed to accurately notify the appellant of these findings as required per MA policy.

After a careful review of the Agency's policies, as well as all the evidence and testimony given, this Appeals Officer finds that the appellant was not given proper and accurate notification of the Agency's findings relative to her April 1, 2012 application for medical assistance (MA). The appellants request for relief in thereby granted.

ACTION FOR THE AGENCY

The Agency is to issue a notice or combination of notices that properly and accurately informs the appellant of the Agency's findings relative to her April 2012 MA application and accurately reflects the MA eligibility that she has been granted.

Pursuant to OHHS (Office of Health and Human Services) Policy, General Provisions Section 0110.60.05, completion of the action required by this decision must be confirmed in writing to this Hearing Officer.



Debra L. DeStefano
Appeals Officer