

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-25486

Issue No: 2006

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 25, 2009

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a three-way telephone conference hearing was held on June 25, 2009. Claimant was represented at the administrative hearing by [REDACTED]. The DHS failed to appear and testify at the administrative hearing.

ISSUE

Did the Department of Human Services (DHS) present evidence to meet its burden of proof to show that it correctly denied claimant's 11/23/05 MA application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On 11/23/05, claimant through claimant's representative (hereinafter claimant/representative) filed an MA application with the Michigan DHS.

(2) The department failed to prepare an adequate evidentiary packet in this case. There is no evidence in the file to show that a hearing denial notice was issued. The Hearing Summary states that claimant was notified of a denial on 2/14/08. There is no evidence that claimant's representative was notified of the denial.

(3) The department's Hearing Summary indicates that the hearing request was untimely.

(4) SOAHR accepted a contingent withdrawal by [REDACTED]. The contingency was based upon the department reinstating and reprocessing claimant's application. There is no evidence that the department did so.

(5) On 6/11/09, SOAHR granted [REDACTED] request to reinstate its hearing request. On 6/11/09, SOAHR issued a Notice of Hearing to claimant and the department informing both parties of an administrative hearing scheduled for 11:00 a.m. on June 25, 2009. One half hour after the scheduled time and place for the scheduled administrative hearing, the undersigned Administrative Law Judge contacted the representative who had previously arranged to appear by conference telephone. The representative testified under oath that she had spoken with the hearings coordinator in the county office at 9:00 o'clock in the morning regarding the hearing and discussed the procedure that the county was to call SOAHR for the hearing and that no client would be appearing at the local office. After the one half hour window allowed to parties to appear for an administrative hearing, the undersigned Administrative Law Judge proceeded with the hearing. The department failed to appear.

(6) The department failed to package any evidentiary packet for this case and/or appear at the administrative hearing and testify or be subject to cross-examination regarding this case.

(7) The representative credibly testified that [REDACTED] had presented the local office with necessary verifications. The department should have forwarded the case to the MRT. The representative credibly testified that all verifications were issued by the due date.

(8) The representative indicated that claimant was subsequently awarded Social Security disability with a disability onset date of 4/27/06.

(9) The representative credibly testified that they were never given notice of the denial and thus, the 90-day window did not begin to run. [REDACTED] hearing request was not untimely as the time period was tolled.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Applicable policy and procedure regarding the status of authorized representatives with the Michigan DHS in MA applications states in part:

AUTHORIZED REPRESENTATIVES

All Programs

An **Authorized Representative** (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf (e.g., to obtain FAP benefits for the group.) An AR is not the same as an Authorized Hearing Representative (AHR) PAM, Item 110, p. 6.

The AR assumes all the responsibilities of a client. See PAM 105. PEM, Item 110, p. 7.

In this case, as noted above, all authorized representatives stand in the shoes of the client. Moreover, the department is required to communicate with the representative regarding any requests and/or communications regarding the status of an application.

As already noted, the department failed to appear at the administrative hearing. The department was given notice by SOAHR by way of electronic e-mail on 6/11/2009 of the 6/25/09 hearing. On the morning of the hearing, the representative contacted the local office as this was previously arranged to be a 3-way telephone hearing with [REDACTED]. The Notice of Hearing indicates that the telephone hearing was to be a: "3-Way with [REDACTED]. The Administrative Law Judge waited one half hour before proceeding with the hearing. No one from the local office called SOAHR or attempted to appear for the administrative hearing. Nor did the department prepare an adequate evidentiary packet in this case as required by PAM 600.

Under PAM 600, General Evidentiary Rules, and the DHS Administrative Hearings Handbook, the department has the burden of proof to go forward at an administrative hearing to establish that the determination taken by the department was consistent with its policy and procedure. The department failed to appear for this hearing. Claimant's testimony by way of the authorized representative who testified under oath gave credible and substantial testimony with regards to the verification(s) in this case as well as the failure of the department to adequately notify the representative. General verification policy and procedure is found in PAM Items 100-120. The DHS did not meet its burden with regards to the facts in this case and thus, the department's denial is reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's denial of claimant's 11/23/05 application was incorrect and thus, REVERSED.

The department is ORDERED to reinstate claimant's 11/23/05 application. The department is ORDERED to reprocess the application and issue any supplemental benefits to claimant to which claimant may be entitled. The department is ORDERED to communicate with [REDACTED] on this case. The department shall issue a notice of its disposition on this case. Should the representative dispute the disposition and/or calculation, claimant shall retain a right to a hearing for 90 days from the date of the new notice. It is SO ORDERED.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 21, 2009

Date Mailed: July 21, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

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cc:

