

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: 2008-30513

Issue No: 2006

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 30, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on April 30, 2009.

ISSUE

Was the claimant's Medicaid properly cut off for failure to return proper verifications?

FINDINGS OF FACT

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

- (1) Claimant was up for a yearly Medicaid review in August, 2008.
- (2) Claimant was provided a DHS-3503, Verification Checklist, requesting, among other things, a verification of her assets.
- (3) The checklist was sent out on 7/31/08, with a due date of 8/10/08.

(4) Claimant is 71 years old and suffers from some mental disabilities.

(5) Claimant's son is her legal guardian.

(6) Claimant received the verification requests in the mail.

(7) Claimant did not notify her son that she received the verifications, and her son was unaware that the verifications had arrived.

(8) It is unknown what happened to the verifications.

(9) Claimant received a negative action notice on 8/13/08.

(10) Claimant had a friend fill out the negative action notice hearing request and did not notify her son about it.

(11) Claimant's hearing request was filed on 8-22-08, and stated in part, that her redetermination papers had been turned in sometime in early July, 2008, over a month before they had been sent out.

(12) The negative action date of the Medicaid case was 8-26-08, four days after DHS received claimant's hearing request.

(13) Despite being on notice that claimant was confused, DHS did not contact claimant to clear up the confusion.

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).

All assets must be verified. Assets include bank accounts and other types of accounts that contain savings. PEM 400.

Verifications must be turned in within a certain period of time. PAM 130 states:

Allow the client 10 calendar days (**or** other time limit specified in policy) to provide the verification you request. If the client cannot provide the verification despite a reasonable effort, extend the time limit at least once....Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed and the client has not made a reasonable effort to provide it.” PAM, Item 130, p. 4

Furthermore, help must be provided to a claimant in securing verifications if they need and request assistance. PAM 130.

While it is clear that claimant did not provide records of her bank accounts, as requested properly by the Department, it is debatable whether claimant actually refused to provide verifications. However, testimony indicates that even if claimant refused to provide verifications, claimant’s state of mind was such that she could not have done so knowingly. Furthermore, her contact with the Department in her hearing request should have raised red flags that indicated that claimant needed help in securing the verifications, or at the very least, needed the time limit extended.

Claimant’s son testified at hearing that claimant has been diagnosed with schizophrenia, a mental disability that seriously affects judgment and daily functioning. The undersigned saw no evidence at the hearing that this was not the case; claimant’s affect, manner of speech and mannerisms were all consistent with this diagnosis.

Claimant's son also testified that he never received the verification checklist; claimant sometimes disposes of her mail without looking at it. The undersigned saw no reason to dispute this testimony.

While it is true that if claimant's son is claimant's legal guardian, he should have been more careful in the securing of claimant's mail, the undersigned sees no reason to punish claimant for the mistake of others, especially if the punishment of the claimant could result in irreparable harm to the claimant.

PAM 130 states that a claimant usually has 10 days to provide verifications, but the time limit may be extended if the claimant has trouble providing verifications. A negative action notice may only be sent if the claimant refuses to provide verifications, or the time limit had elapsed and the claimant has not made a reasonable effort to provide the verifications.

Claimant clearly did not refuse to provide verifications. In fact, in claimant's mental state, claimant could not legally have refused (or for that matter, agreed) to anything. Furthermore, while the time limit had indeed elapsed, the second clause states that a negative action notice can only be sent if a claimant has not made a reasonable effort to provide verifications. In claimant's mental state, claimant could not have made an effort to provide anything; her effort was therefore reasonable, in light of a client with schizophrenia.

While it is true that the Department was unaware of claimant's mental condition, the Department's lack of knowledge was not the fault of the claimant. Also, claimant did send a hearing request on 8-22-08, requesting a hearing stating that she had turned in the documents over a month before they were sent. This should have raised red flags with the Department, and at the very least, should have prompted a phone call, especially to a vulnerable, 71-year-old client and an extension on the deadlines, which would have been consistent with PAM 130.

It is clear that the Department could have determined the problem before the negative action date, extended the time limit, and set things in motion so that claimant's son would get all future notices. The Department could have also assisted in securing verifications, once it realized there was a problem. While it is true that the regulations say, strictly speaking, that a claimant must request help in order for assistance to be rendered, common sense dictates that a claimant who is unable to request help at all, but clearly needs it, such as in the case here, should also fall within this guideline of providing assistance.

This is not to cast blame on the Department for the situation up to that point; claimant's son has little excuse for not monitoring claimant's mail more closely as her legal guardian, and it is clear that the Department had no cause for investigation into the claimant's situation until claimant's hearing request arrived on 8-22-08. Claimant's son was negligent, and would do well to avoid such negligence in the future. However, when the hearing request arrived, the Department should have looked into the situation, and determined if the claimant needed assistance. This was all before the negative action date; the regulations allowed for the Department to avoid the situation at hand. That it did not do so is error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to cut off claimant's Medicaid case based upon the failure to provide requested verifications was incorrect.

Accordingly, the Department's decision is, hereby, REVERSED.

The Department is ORDERED to reinstate claimant's Medicaid retroactively to the negative action date, in accordance with the Program Eligibility Manual. Reinstatement should continue only until verifications of claimant's eligibility are received and the Department is able

to determine eligibility properly. If the claimant fails to return these verifications within the appropriate time limits, normal penalties shall apply. Furthermore, the Department is ORDERED to contact claimant's legal guardian and have all future correspondence directed to him, including the above mentioned verifications that will be requested.

/s/ _____
Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 20, 2009

Date Mailed: May 22, 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

RJC/cv

cc:

[REDACTED]