

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: 2008-16761

Issue No: 2006

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 24, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 telephone hearing was held on Tuesday, March 24, 2009. The claimant is deceased, but was represented by [REDACTED]

ISSUES

(1) Did the department properly determine that [REDACTED] did not have the authority to represent when they filed the application on October 31, 2006 when the claimant had died on [REDACTED]?

(2) Does [REDACTED] have standing to file a request for a hearing for an application filed on October 31, 2006 for a claimant that died [REDACTED]?

FINDINGS OF FACT

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

- (1) The claimant died on [REDACTED].
- (2) On October 12, 2006, [REDACTED] received authorization to represent from the claimant's brother. (Department Exhibit 11)
- (3) On October 31, 2006, [REDACTED] filed an application on behalf of the claimant for retroactive MA for the month of July 2006 to cover his hospitalization. (Department Exhibit 1-6)
- (4) This application was signed by a representative of [REDACTED] who had an authorization to represent form that was signed by the claimant's brother. (Department Exhibit 7)
- (5) On November 21, 2006, the application was registered on the system and a Pending Application Notice, DHS-330, was mailed to the home address of the claimant cited on the application to provide notice that the application was not complete. The application filed on October 31, 2006 did not contain a signature of a personal representative appointed by probate court to handle the claimant's estate. The DHS-330 was not mailed to [REDACTED] because [REDACTED] were not authorized to represent the claimant by the personal representative of the claimant's estate. A valid signature and proof of representation was not provided within 10 days. Therefore, the claimant's application was disposed of using administrative corrective code of 999 on December 1, 2006. (Department Exhibit 15)
- (6) On April 4, 2007, [REDACTED] was appointed as personal representative of the claimant's estate. (Department Exhibit B2)

(7) On July 12, 2007, [REDACTED] signed an authorization to represent on behalf of the claimant for [REDACTED] to represent the claimant. (Department Exhibit B3)

(8) On August 7, 2007, [REDACTED] filed a request for a hearing on behalf of the claimant.

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).

The Department's Policy Manuals provide the following relevant policy statements and instructions for caseworkers:

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- . Determine eligibility.
- . Calculate the level of benefits.
- . Protect client rights. PAM, Item 105, p. 1.

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. PAM, Item 105, p. 5.

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the client when they need your help to obtain it. Such help includes the following:

- . Scheduling medical exam appointments
- . Paying for medical evidence and medical transportation
- . See PAM 815 and 825 for details. PEM, Item 260, p. 4.

LOCAL OFFICE RESPONSIBILITIES

All Programs

Ensure client rights described in this item are honored and that client responsibilities are explained in understandable terms. Clients are to be treated with dignity and respect by all DHS employees. PAM, Item 105, p. 8.

Informing the Client

All Programs

Inform people who inquire about:

- . the DHS programs available, including domestic violence comprehensive services.
- . their right to apply.

Provide specific eligibility information on any program they are interested. PAM, Item 105, p. 9.

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.

The AR must give his name, address, and title or relationship to the client. To establish the client's eligibility, he must be familiar enough with the circumstances to complete the application, answer interview questions, and collect needed verifications. PAM, Item 110, p. 7.

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal a department action. 45 CFR 205.10.

Time period for requesting hearing. A household shall be allowed to request a hearing on any action by the State department or loss of benefits which occurred in the prior 90 days. Action by the State department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits. 7 CFR 273.15(g).

MA Only

Application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, specified relative or any other person provided the person is at least age 18 or married. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or specified relative the person must have a signed authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian.

The application form must be signed by the client or the individual acting as his authorized representative.

When an assistance application is received in the local office without the applicants signature or without a signed document authorizing someone to act on the applicants behalf you must do the following:

- Register the application as a request if it contains a signature.
- Send a DHS-723, Incomplete Application Notice, to the agency or the individual who completed the application.
- Send a DHS-330, Pending Application Notice, to the client explaining the need for a valid signature. The signature page of the application may be copied and sent to the agency or individual who filled out the application with the notice.
- Allow 10 days for a response. You cannot deny an application due to incompleteness until 10 calendar days from the date of your initial request in writing to the applicant to complete the application form or supply missing information, or the initial scheduled interview.
- Record the date the application or filing form with the minimum information is received. The application must be registered and disposed of on ASSIST, using the receipt date as the application date.

An application received from an agency is acceptable if it is signed by an individual and is accompanied by written documentation from the client authorizing the agency to act as their authorized representative.

Note: If unrelated adults living in the same home apply for assistance, neither has the authority to act on the other's behalf without written permission from the applicant.

Authorized
Representative

MA Only

An authorized representative must be:

- An adult child or stepchild, or
- A specified relative, see [PEM 135](#), or
- Designated in writing by the client, or
- Court appointed, or
- A representative of an institution (e.g., jail, prison) where the clients in custody.

**SPECIFIED
RELATIVE
DEFINED**

A specified relative is any of the following:

- Parent.
- Aunt or uncle.
- Niece or nephew.
- Any of the above relationships prefixed by grand, great or greatgreat.
- Stepparent.
- Sister or brother.
- Stepsister or stepbrother.
- First cousin.
- First cousin once removed (i.e., a first cousin's child).
- The spouse of any person above, **even** after marriage is ended by death or divorce.

The above includes relationships established by adoption.

Note: Termination of **parental rights** is a court order that ends a parent's rights and responsibilities to the child.

A person whose parental rights are terminated by a court is not a specified relative. The child's relationships to **other** specified relatives are not affected.

**INITIAL ASSET
ASSESSMENTS**

MA Only

Register an initial asset assessment using the ASSIST Registration function upon receipt of a signed DHS-4574-B, Assets Declaration.

**REGISTERING
APPLICATIONS**

All Programs

Register a signed application or filing form, with the minimum information, within one **workday** for all requested programs.

See “Right **To Apply**” in the “**CLIENT RIGHTS**” section in PAM 105 for the minimum information necessary to register an application.

All department programs are registered using the registration functions on ASSIST. ASSIST determines the registration category codes based on information you record from the application or filing form. See AUM for procedures.

Register signed applications for the following programs:

- FIP, SDA, MA, AMP and SER.
- FAP (by the local office where the client lives).
- Refugee assistance.
- Child Development and Care (CDC).
- Services.
- Hospitalization (special, migrant and nonresident).

When registering an application with minimum information, use your best judgment to code race and sex. The assigned specialist must update the coding, if necessary, when the application is completed.

In the instant case, the claimant died on [REDACTED]. [REDACTED] filed an application on October 31, 2006 on the claimant’s behalf. [REDACTED] did not have authorization to become an authorized representative because the claimant had died. Once a claimant is deceased before the application is filed the only person who can file an application on the claimant’s behalf is a spouse, parent, legal guardian, adult child, stepchild, or specified relative as cited in PAM 135.

The department received the application on October 31, 2006 where they properly registered the application. The claimant was deceased on [REDACTED]. There was no proper signature on the application received. The department registered the application and sent to the claimant’s address on November 21, 2006 a Pending Application Notice for the application to be completed in order for the claimant’s eligibility for MA to be determined. The department did

not receive a response within 10 days, resulting in the application being denied. The claimant's brother could have applied for MA on behalf of his deceased brother as a specified relative. However, the claimant's brother did not have the authority to give [REDACTED] the authorization on behalf of his deceased brother to apply for MA. [REDACTED] was not an authorized representative on the case and was not sent the Pending Application Notice.

Therefore, the department properly disposed of the case using the administration corrective code of 999 since a valid signature and proof of representation was not provided within 10 days. As a result, the 90-day clock to appeal the department's decision started on December 1, 2006. A timely hearing request would have to be filed by March 1, 2007. [REDACTED] did not file a hearing request until August 7, 2007. As a result, [REDACTED] hearing request is not timely nor do they have standing to file a hearing request.

Therefore, the department has established that it was acting in compliance with department policy by determining that [REDACTED] did not have standing to file an application for a claimant that was deceased with authorization from the claimant's brother and the hearing request was not timely.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department appropriately denied the application for retroactive MA filed by [REDACTED] because [REDACTED] did not have the authority to represent the deceased claimant and [REDACTED] does not have standing to request a hearing.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 30, 2009

Date Mailed: April 30, 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 receipt date of the rehearing decision.

CGF/vmc

cc:

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