

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2008-28387 REHD
DHS Reg. No. 2008-20849

████████████████████

Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge err by dismissing the Claimant's request for hearing ?

FINDINGS OF FACT

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

1. On February 27, 2008, the Claimant filed an application with the Department of Human Services (DHS) for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P) through her authorized representative, ██████████
████████████████████
2. On March 18, 2008, the DHS Medical Review Team (MRT) denied the Claimant's applications. ██████████ alleged that DHS did not send ██████████ a negative action notice.
3. On June 12, 2008, ██████████ requested a hearing on the matter. ██████████ indicated in its request that DHS had not process the Claimant's February 2008, applications.

4. On June 27, 2008, DHS sent [REDACTED] a DHS Hearing Summary. The Hearing Summary indicated that DHS had received and processed the Claimant's February 2008 applications. The DHS Hearing Summary also indicated that a negative action or denial letter was sent on March 18, 2008. The Hearing Summary packet included a copy of a DHS 1150/4598 Application Eligibility Notice dated March 18, 2008.
5. On July 22, 2008, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services issued an Order of Dismissal, in which SOAHR indicated that the issue raised in the Claimant's request for hearing had been resolved and that SOAHR did not have jurisdiction to hear the matter.
6. On August 15, 2008, SOAHR received a Motion to Reinstate prepared by [REDACTED]. In its Motion, [REDACTED] indicated that the Claimant's request for hearing would be withdrawn if DHS provided a "currently dated denial notice", and that the DHS March 18, 2008, Application Eligibility Notice was inadequate notice.
7. On October 2, 2008, SOAHR processed the Motion to Reinstate as a Request for Rehearing/Reconsideration and granted Claimant's request for reconsideration.

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 Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (RPM).

Title 42 of the Code of Regulations implements the MA program. Federal; regulations at 42-CFR 431.220 provide in pertinent part (emphasis added):

§ 431.220 When a hearing is required.

(a) The State agency must grant an opportunity for a hearing to the following:

(1) *Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness.*

- (2) Any recipient who requests it because he or she believes the agency has taken an action erroneously.
 - (3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged.
 - (4) Any individual who request it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.
 - (5) Any MCO or PIHP enrollee who is entitled to a hearing under subpart F of part 438 of this chapter.
 - (6) Any PAHP enrollee who has an action as stated in this subpart.
 - (7) Any enrollee who is entitled to a hearing under subpart B of part 438 of this chapter.
- (b) The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

In addition to the federal Medicaid Fair hearing regulations Michigan administrative rules provide further requirements for appeals of DHS denials of Medicaid applications. These regulations at 400.903 provide in pertinent part (emphasis added):

MAC R 400.903 Right to hearing

- (1) *An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggravated by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance.*
- (2) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial, suspension, or exclusion from a service program or failure to take into account a recipient's choice of service.

(3) A hearing shall not be granted when either state or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

(4) An applicant for, or holder of, a license issued by the department is entitled to a hearing based upon the denial, limitation, refusal to renew, or revocation of a license.

(5) A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process, but shall be referred to the department personnel director.

The Claimant submitted her hearing request to prompt the DHS to take action with regard to Claimant's application, or to obtain a written notice of an application denial. The Claimant essentially was alleging in her hearing request that she filed a Medicaid application with DHS and that DHS failed to act on the application with reasonable promptness. Both the federal fair hearing regulations and Michigan administrative rules require DHS to process Medicaid applications with reasonable promptness. The failure of DHS to act with reasonable promptness would be a constructive denial of the application. This constructive denial would create a right to fair hearings and would confer jurisdiction on SOAHR to consider an application denial. The evidence presented by DHS shows that DHS received, processed, and denied the Claimant's February 2008 application. The issue raised in the Claimant's request for hearing was resolved after DHS processed and denied the application. Therefore, SOAHR had no jurisdiction to hear the matter after the application was processed and denied.

A review of the Claimant's hearing request shows that neither the Claimant, nor her representative raised any other hearable issues in the hearing request. If the Claimant or [REDACTED] had requested a hearing to protest the DHS denial or other DHS negative action, the federal fair hearing and Michigan administrative rules require that the issue be resolved through a fair hearing. However, in this case, the only issue raised by the Claimant and [REDACTED] was that they were seeking a currently dated DHS notice of denial. Both the federal rules and the Michigan administrative rules require DHS to provide the Claimant and her Authorized Hearing Representative with a written copy of all negative action notices. Neither the federal fair hearing rules, nor the Michigan administrative rules provide that an applicant has a right to a Medicaid fair hearing to obtain a currently dated negative action notice. See 42 CFR 432.220(a)(1) and R 400.903(1).

The DHS Hearing Summary provided to SOAHR clearly indicates that the Claimant's application was received, processed and denied by DHS before the Claimant submitted her request for hearing. The Order of Dismissal was properly issued by SOAHR. The issue of whether the application had been processed was resolved by DHS action. No

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other hearable issue was raised by the Claimant or [REDACTED]. The Michigan administrative rules at 400.906 provide in pertinent part:

MAC R 400.906 Denial or dismissal of request for hearing.

(1) The department shall deny or dismiss the request for a hearing if:

(e) An issue is not appeal able as authorized by R 400.903.

If either the Claimant, or [REDACTED], submitted a request a hearing to contest the DHS denial of the Claimant's February 2008 application, SOAHR would have jurisdiction to consider the DHS denial. However, the only hearable issue raised by [REDACTED] was whether or not the Claimant's application had been processed. That issue was resolved after DHS processed and denied the Claimant's application. Therefore; the ALJ correctly issued an Order of Dismissal.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge properly issued an Order of Dismissal and properly, denied the Claimant's Motion to Reinstate.

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's Order of Dismissal, dated July 22, 2008 is AFFIRMED.

Claimant's Motion to Reinstate is DENIED.

/s/ _____
Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

[REDACTED]
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Date Signed: 8/28/2009
Date Mailed: 8/31/2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.