

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: 2008-21270

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 1, 2009

Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 April 1, 2009. Claimant did not appear; however, he was represented by

[REDACTED]

ISSUE

Did the department properly deny long-term Medicaid (MA) to claimant in his application month and the month after (January/February 2008) based on excess assets?

FINDINGS OF FACT

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

(1) At all times relevant to application filing/processing, claimant was assisted by the attorney of record in this case.

(2) Approximately one and a half years before MA application filing, claimant's attorney engaged in Medicaid (MA) eligibility preplanning by preparing an MFDA Master Escrow Irrevocable Funeral Contract (Department Exhibit #1, pgs 6 and 7; Client Exhibit A, pgs 1-6).

(3) At MA application filing on January 28, 2008, the attorney submitted a copy of this document to the department with claimant's application.

(4) The department mailed Verification Checklists (DHS-3503s) to this attorney on February 4th and 7th, 2008, asking for specific verifications of claimant's assets necessary for application processing, but neither of these extension checklists included an Irrevocable Funeral Contract Certification form (DHS-8A) for him to complete and return.

(5) In fact, the department did not provide said form until they granted a third extension of the record via the checklist dated March 7, 2008 (Client Exhibit D).

(6) Three days later (3/10/08) claimant's attorney promptly returned the properly completed form.

(7) In response, the department approved MA for claimant from March 2008 forward but not earlier based on an April 1, 2007 policy change that no longer allows for retro month coverage (defined as up to three months before the month of application) when funds are in an irrevocable funeral contract at the time of application filing (Department Exhibit #2, pgs 1 and 2).

(8) Claimant's attorney stated at hearing he is not contesting a denial of retroactive MA, but only the department's denial for claimant's application month and the month thereafter (January/February 2008).

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 applicable departmental policy states:

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. PAM, Item 130, p. 1.

Verifications

All Programs

Clients must take actions within their ability to obtain verifications. DHS staff must assist when necessary. See PAM 130 and PEM 702. PAM, Item 105, p. 8.

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.

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.

MA Only

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed. PAM, Item 130, p. 4.

Claimant's attorney correctly noted that at the time claimant's Master Escrow Funeral Contract was drafted (2006) the department's standard practice was to allow for submission of said contract without need for completion of an 8A certification form. Claimant's attorney still held that mistaken belief since no one at the department advised him differently when he filed claimant's application on January 28, 2008, despite the fact the department had the Master Escrow Contract in their possession on that day. Furthermore, the department did not request completion of the 8A certification form until they sent a blank one to him in March 2008 and gave him until March 17, 2008 to return it.

Claimant's attorney responded promptly and got the completed form back to the department within three days, well before the stated deadline expired. He did not ever indicate refusal to provide the verification or miss his deadline for doing so.

The above-referenced policy is clear. It directs the department to send a negative action notice only if: (1) the client (or his/her authorized representative) indicates a refusal to provide a verification; **or** (2) the time period given has elapsed.

Since neither of these conditions existed in claimant's case, the department's denial was premature and it will result in a failure to protect claimant's right to a full and fair determination of MA eligibility in the two months at issue in this case. As such, the department's denial cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously denied long-term MA to claimant in his application month and the month after (January/February 2008) based on excess assets.

Accordingly, the department's denial action is REVERSED, and this case is returned to the local office for application reprocessing with the exclusion of the funds in claimant's irrevocable Master Escrow Contract in the disputed months. **SO ORDERED.**

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 28, 2009

Date Mailed: September 29, 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.

MBM/db

cc:

