

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: 2008-22436

Issue No: 2006

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 28, 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 May 28, 2009.

ISSUE

Was the claimant's Medicaid properly denied 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 an incapacitated individual at the time of the events in question.
- (2) Claimant was at first unrepresented.
- (3) Claimant was then subsequently placed under the legal guardianship of [REDACTED]

[REDACTED]

- (4) On 1-30-08, a Medicaid application was sent out on behalf of claimant by [REDACTED]
[REDACTED]
- (5) On 1-31-08, claimant was sent a DHS-3503, Verification Checklist, in care of [REDACTED] requesting various income and asset verifications.
- (6) The checklist had a due date of 2-13-08.
- (7) On 2-11-08, the Probate Court for Wayne County, Michigan, appointed [REDACTED]
[REDACTED] full guardian of claimant.
- (8) On 2-26-08, claimant's guardian, unaware of the pending Medicaid application, filed a second application on behalf of claimant, alerting DHS that claimant now had a legal guardian, and that all future correspondence was to be directed to the guardian.
- (9) Claimant's 1-30-08 Medicaid application was still pending at this time; no verifications had been turned in, and [REDACTED] did not alert the guardian to the same.
- (10) The 2-26-08 application requested retroactive Medicaid benefits to December 2007.
- (11) The 2-26-08 application was apparently merged into the 1-30-08 application, and retroactive Medicaid benefits were considered.
- (12) A handwritten note on the DHS-3503 of 1-31-08 says "Copy for [REDACTED] App rec'd 1-13-08(sic) from Nrsng Hm—this was sent 1-31-08—no response—Extensn to 3-12-08!!?".
- (13) There is no evidence that [REDACTED] was ever sent the extended DHS-3503.
- (14) On 3-14-08, claimant's 1-31-08 application was denied for a failure to provide verifications. While the notice was apparently sent to [REDACTED] other evidence indicates that [REDACTED] never received the denial.

(15) On 3-25-08, [REDACTED], an assistant to [REDACTED], contacted claimant's DHS caseworker to inquire about the 1-31-08/2-26-08 application.

(16) [REDACTED] was informed by the caseworker that the case had been denied; this is verified by work product submitted by claimant's attorney with the following note, dated 3-25-08: "Per [REDACTED], case closed because nursing home did not return paperwork. An application was filed prior to us filing. Was not aware she had a guardian."

(17) Furthermore, [REDACTED] testified via submitted affidavit that [REDACTED], claimant's caseworker, told [REDACTED] on 3-25-08 that [REDACTED] was unaware that claimant had a guardian and had closed the case because the nursing home did not return the paperwork.

(18) Following that conversation, on 3-25-08, [REDACTED] filed another Medicaid application on behalf of claimant, requesting retroactive benefits back to 12-01-07.

(19) At this time, [REDACTED] submitted all verifications including several asset verifications.

(20) During the processing of this application, the Department discovered that claimant had had a checking account with [REDACTED]

(21) [REDACTED] was unaware of this account.

(22) On 4-11-08, DHS sent a second DHS-3503 to [REDACTED] with a due date of 4-21-08.

(23) This DHS-3503 requested verification of the [REDACTED] account for the requested months of Medicaid.

(24) While this verification was properly addressed, there is indication that this letter was never received.

(25) On 5-9-08, [REDACTED] was sent a denial notice for claimant, stating that the Medicaid was denied for failure to provide verification of the [REDACTED].

(26) On 5-12-08, [REDACTED] contacted claimant's new caseworker to inquire into the status of the case.

(27) [REDACTED] was told that the case had been closed because of a failure to provide the [REDACTED] verifications.

(28) [REDACTED] promptly contacted [REDACTED] with regard to the account, and secured the verifications on 5-20-08.

(29) On 5-23-08, [REDACTED], on behalf of [REDACTED] wrote DHS to appeal claimant's case closure.

(30) [REDACTED] submitted the [REDACTED] verifications with this request for appeal.

(31) It was not specifically stated which denial—either the 3-14-08 or the 5-9-08 denial—[REDACTED] was appealing.

(32) [REDACTED] represented claimant at hearing; a written brief with attached exhibits were prepared by [REDACTED] and admitted into evidence by Administrative Law Judge Chavez subsequent to the hearing.

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 up to three times....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.

Before we may discuss the applicable law with regard to the verifications, we must first discuss exactly which application is being appealed at this time.

Claimant’s exhibits clearly show that there were a total of three applications submitted: an application on 1-30-08; an application on 2-26-08; and an application on 3-25-08.

Claimant’s communication with the Department on 5-23-08 only stated that she wished “to appeal her case closure and ask that a hearing date be set”. While this letter was ostensibly to appeal the denial of the 3-25-08 application, it is important to note that this would also be a timely appeal of the 1-30-08 application; that denial was sent out on 3-14-08. An application is timely if filed within 90 days of the date of the original notice of case action. PAM 600. 90 days after 3-14-08 would place the deadline for hearing application at 6-14-08.

As claimant did not specifically state which application she was requesting a hearing for, the Administrative Law Judge will hold that claimant was requesting a hearing on all actions taken against her case up to that point that she could legally request a hearing for. This would include both application denials—both the denial on 3-14-08 and the denial of 5-9-08.

While the Department did prepare a hearing summary on 6-22-09 stating that this was not a timely appeal request, the Administrative Law Judge believes that this hearing summary was

prepared in response to the claimant's submission of their Brief in Support of Appeal of Denial of Benefits, which was submitted on 6-11-09. This brief was prepared for the current case and was not a second appeal requesting a hearing on the 3-14-08 denial. The Administrative Law Judge believes that the actual request for hearing on this matter came on 5-23-08, when the claimant requested an appeal on the case actions against her up to that point. Therefore, the appeal of the 3-14-08 denial was timely and appropriate.

As we are dealing with two separate application denials at this time, the Administrative Law Judge will discuss the actual denials in chronological order; should the Administrative Law Judge find that the first application was improperly processed or denied, it will not be necessary to decide the properness of the subsequent denial, as that denial will be considered moot.

The application of 1-30-08 was denied because the claimant refused or failed to provide asset and income verifications as requested by the Department. This application was filed by claimant's nursing home, and the subsequent request for verifications was sent to the same nursing home. This nursing home did indeed fail to provide the verifications by the requested time limit; however, the time limit could be extended three times. Had the Department processed the case closure immediately after the first deadline, and had it been proved conclusively that no extension was requested within a reasonable timeframe, the Department would have been correct in its denial—they were not in possession of the information necessary to render a decision with regard to the Medicaid application. Unfortunately for the Department, they delayed in the processing of the claimant's application.

Unknown to the Department, claimant was appointed a legal guardian on 2-11-08, [REDACTED], unaware that an application had already been filed on 1-30-08, sent a letter to the Department on 2-26-08, alerting the Department to the fact that he had been appointed guardian to the claimant. This letter contained an application for Medicaid

and retroactive Medicaid, with the retroactivity requested back to 12-01-07. Requests were made to forward all correspondences to [REDACTED]. This letter also included the Probate Court order of 2-11-08 stating appointing [REDACTED] to the position.

The subsequent chain of events is unclear. While the DHS-3503 (with the due date of 2-13-08) has a handwritten note on it stating that a copy is to be sent to [REDACTED], and the due date is to be extended to 3-12-08, no actual verification of sending is anywhere in the record. Furthermore, [REDACTED] work product, contained as an exhibit to claimant's brief and admitted into the evidentiary record by the Administrative Law Judge, dating to 3-25-08, notes that the Department was contacted on that date, and [REDACTED] assistant, [REDACTED], was informed by the Department that the Department was unaware that [REDACTED] was claimant's guardian and that the 1-30-08 application had been denied because no verifications were returned by the nursing home.

The Administrative Law Judge finds [REDACTED] work product, taken at the time of the denial and containing the assistant's impressions of her conversation, to be a far more credible piece of evidence than a handwritten note on the DHS-3503. The Department has presented no evidence that this DHS-3503 was ever sent to [REDACTED] other than this note. No DHS-3503, addressed to [REDACTED] with an extension date of 3-12-08, is anywhere in the file. Therefore, the Administrative Law Judge must deem that this form was never sent to the claimant's guardian.

Had the case closed on 2-14-08, when the nursing home did not return the requested verifications, the Administrative Law Judge would have little to say on the matter. However, by not processing the case closure, the Department left an open door for a subsequent return of verifications. When the Department was notified by the letter of 2-26-08 that claimant was

appointed a legal guardian on 2-11-08, the Department had a legal duty to resend the verification request to the guardian.

This guardian was appointed before the case was scheduled to close, before the request for verifications was due, and therefore, was legally entitled to all information with regard to the claimant's case. A request for verifications must be sent to the claimant or the claimant's authorized representative. PAM 130. That authorized representative was [REDACTED] and he was appointed before the verifications were due. Therefore, he was entitled to the verification request, and the Department was aware of this fact before the case had been denied.

However, there is no evidence that [REDACTED] was sent this request. As such, and as the Administrative Law Judge has already held that the great weight of the evidence shows that the request was never sent, the Department was in error when they denied the application of 1-30-08, and the application of 2-26-08, before [REDACTED] had been sent the need for verifications. These applications should not have been denied until claimant's legal guardian had been given a chance to secure the verifications.

As the Department was in error with regard to the 3-14-08 denial, it is unnecessary for the Administrative Law Judge to evaluate the merits of any subsequent denial, including the denial of 5-09-08. However, it is important to note that the Department is, thanks to this subsequent application, already in possession of all required verifications, including that of the [REDACTED] that made up the central issue of that particular denial. As the Department is already in possession of all required verifications, it should have no trouble processing the 1-30-08 application upon receipt of this Decision and Order.

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 deny claimant's Medicaid application of 1-30-08, based upon the failure to provide requested verifications was incorrect.

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

The Department is ORDERED to process claimant's Medicaid application retroactively to December 1st, 2007, in accordance with the Retroactive Medicaid Application filed on 2-26-08 and ostensibly denied on 3-14-08, in accordance with all items found in the Program Eligibility Manual. In processing this application, the Department is ORDERED to use all verifications currently in its possession as a result of the above-stated matter; should further verifications be required, all requests should be directed to claimant's legal guardian.

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

Date Signed: July 10, 2009

Date Mailed: July 13, 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:

