

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: 2008-26802
Issue No: 2000; 2018
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 17, 2009
Shiawassee 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 three-way telephone hearing was held on Thursday, September 17, 2009. The claimant was present with his authorized representative, [REDACTED]

ISSUES

- (1) Whether the claimant/authorized representative filed a timely request for a hearing to dispute the denial of the claimant's Medical Assistance (MA) application?
- (2) Did the department error in determining that the claimant was not eligible for Group 2 Caretaker MA?

FINDINGS OF FACT

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

(1) On October 24, 2007, [REDACTED] applied for Medical Assistance and State Disability Assistance on behalf of the claimant with retroactive Medical Assistance requested to July 2007.

(2) On December 4, 2007, the Medical Review Team denied eligibility for disability.

(3) On June 20, 2008, the department received a hearing request from the claimant's authorized representative stating that they had not received notice of eligibility regarding Group 2 eligibility.

(4) During the hearing, the department caseworker testified that the claimant or his authorized representative when filling out the application answered no to the question is anyone in the home other than a parent acting as a parent to a person under 21 years of age. (Department Exhibit A5) As a result, Group 2 eligibility was not considered for the claimant. The claimant's sister and her son were in the home along with the claimant and the claimant's mother. The claimant's sister would be required to apply for Medicaid for herself and her son if needed.

(5) The authorized representative from [REDACTED] is not disputing the MRT denial, but is requesting that the department consider Group 2 MA of Caretaker Relative.

(6) During the hearing, the claimant stated that his nephew has insurance through a biological family member and did not need MA.

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 manuals provide the following relevant policy statements and instructions for caseworkers:

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 GROUP COMPOSITION

DEPARTMENT POLICY

LIF

Group composition policy for Low-Income Families (LIF) is in PEM 110. Do not use the policy in this item to determine group composition for LIF. PEM, Item 211, p. 1.

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Use fiscal groups and, for SSI-related MA, Group 2 Persons Under Age 21 and Group 2 Caretaker Relative, asset groups to determine the financial eligibility of a person who requests MA and meets all the nonfinancial eligibility factors for an MA category.

Individual family members may be eligible under different MA categories. You must explore all categories for each person who

requests MA. See “CHOICE OF CATEGORY” in PEM 105. PEM 211, p. 1.

RULES FOR GROUPS

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Determine the fiscal and asset groups separately for each person requesting MA. When referring to the group listings, remember:

- Only persons living with one another can be in the same group. See “**LIVING WITH.**”
- Certain persons cannot be fiscal or asset group members in SSI-related MA. See “**EXCLUDED PERSONS**”.
- There is NO asset test for Group 2 FIP-related MA and the Healthy Kids categories.
- **For all Group 2 FIP-related MA and Healthy Kids categories**, when a child lives with both parents who do not live with each other (e.g., child lives with his mother two weeks each month and his father the other two weeks), only one parent, the primary caretaker, is in the fiscal group. You must determine a **primary caretaker**. The primary caretaker is the parent who is primarily responsible for the child’s day-to-day care and supervision in the home where the child sleeps more than half the days in a month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made. Vacations and visitations with the absent parent do not interrupt primary caretaker status. See rules in PEM 255 concerning support from the other parent. See “Verification Sources” in this item:
 - .. Joint physical custody occurs when parents alternate taking responsibility for the child’s day-to-day care and supervision. It may be included in a court order or may be an informal arrangement between parents. A child is considered to be living with only one parent in a joint custody arrangement. This **parent is the primary caretaker**.
- **For all Group 2 FIP-related MA and Healthy Kids categories**, count a pregnant woman as at least two

members. If twins **are verified**, count the woman as three, etc.

- **For PEM, Item 125 and 126 categories only**, continue to count the woman as two (or three, etc.) for two calendar months following her pregnancy termination for each unborn not resulting in a live birth. PEM, Item 211, pp. 1-2.

LIVING WITH

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Living with others means sharing a home where family members usually sleep, **except** for temporary absences. A temporarily absent person is considered in the home. PEM, Item 211, p. 2.

Temporary Absence

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

A person's absence is temporary if for the month being tested:

- his location is known; **and**
- there is a definite plan for him to return home; **and**
- he lived with the group before the absence (**Note:** newborns and unborns are considered to have lived with their mothers); **and**
- the absence did not last, or is not expected to last, the entire month being tested unless the absence is for education, training, or active duty in the uniformed services of the U.S.

Exception: An absence is never temporary when:

- the month being tested is an L/H month (see PRG) for the absent person; or
- the absent person is in one of the following on the last day of a past month or on the processing date for current and future months:
 - Long-Term Care (LTC) facility
 - Adult foster care facility

- .. Home for the aged
- .. Licensed child foster care home
- .. Child caring institution

Therefore, the above persons (including spouses living in the same facility) are never considered to be living with others. PEM, Item 211, pp. 2-3.

Under the current department policy, the Administrative Law Judge has no authority to address substantive issues regarding department action unless a timely hearing request was filed. The department defines a timely hearing request to be a hearing request filed within 90 days of the negative action date. MAC R 400.902; MAC R 400.903; MAC R 400.904; and PAM 600. The claimant's authorized representative filed a hearing request on June 20, 2008, which was past the 90 day requirement of the December 4, 2007 negative action notice. Based on the foregoing analysis, the Administrative Law Judge concludes that the claimant or his authorized representative did not file a timely hearing request to challenge the department's decision based on the negative action notice sent on December 4, 2007.

However, this Administrative Law Judge will note that the claimant's authorized representative on the application stated that there was no one in the home other than a parent acting as a parent to a person under 21 years of age, which would not require the department to consider Group 2 eligibility. The department considered the claimant for disability, which he was denied by the MRT on December 4, 2007 and enrolled the claimant in the Adult Medical Program (AMP).

Therefore, the Administrative Law Judge must find that the department has established that it was acting in compliance with department policy when it determined that the claimant was not disabled based on his application filed October 24, 2007. The claimant was not eligible for

Group 2 eligibility because he was not acting as a parent for any person under 21 years of age and in the household.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly denied the claimant's MA application because he was not disabled and appropriately did not consider the claimant for Group 2 eligibility because his authorized representative did not note on his application that he was acting as a parent to anyone within the household under 21 years of age. In addition, the claimant's hearing request was not timely.

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

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

Date Signed: October 27, 2009

Date Mailed: October 27, 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.

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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:

