

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: 2008-28455

Issue No: 2000; 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 10, 2009

Chippewa County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's representative's request for a hearing. After due notice, a three-way telephone conference hearing was held on March 10, 2009, with claimant's attorney [REDACTED] appearing by conference phone.

ISSUE

Is there jurisdiction to proceed where a representative and/or the client failed to file a timely hearing request with the Department of Human Services (DHS) within the 90-day jurisdictional window?

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 11/7/07, claimant applied for MA-P and SDA with the Michigan DHS.
- (2) On 2/13/08, MRT approved the SDA and denied the MA-P.

(3) On 2/14/08, the department issued an Eligibility Notice (FIA-1150) that states: 'Procedures for requesting a fair hearing: If you believe this action is illegal, you may request a hearing within 90 days of the date of this notice.... Instructions: ... deliver or mail completed form to your local DHS office...'

(4) On April 30, 2008, the State Office of Administrative Hearings and Rules (SOAHR) received a letter dated 4/29/08 from [REDACTED] regarding this case stating: 'The above-referenced individual has requested [REDACTED] to represent [sic] in the Medicaid appeal process. Please find following an authorization to represent form signed by [claimant]. We are requesting the hearing remain scheduled as a telephone hearing...'

Exhibit 231.

(5) [REDACTED] signed on with claimant as claimant's representative pursuant to representing a hospital for the collection of a medical bill after the DHS 2/14/08 notice was issued.

(6) SOAHR forwarded [REDACTED] letter (Exhibit 231) to the DHS Chippewa office on 8/15/08.

(7) On August 20, 2008, Chippewa County returned a hearings packet to SOAHR for scheduling. Exhibit 231.

(8) Unrefuted evidence is that a hearing request was never filed by the client or by [REDACTED]. All parties stipulated to the date stamps on [REDACTED] April 29, 2008 letter.

(9) [REDACTED] stipulated it erred in assuming that their client filed a hearing request.

#### 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).

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy and federal law state:

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 department must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.

As noted above, the federal and State policy requires an Authorized Hearing Representative (AHR), or if none, the client, 90 days from the date of the written notice to request a hearing. None of the parties disputed this fact at the administrative hearing.

Other applicable policy and procedure to the issue herein deals with where an AHR or client must file a request for a hearing. This turns on whether or not the [REDACTED] letter of April 29, 2008, received by SOAHR on April 30, 2008, could be or should have been construed as a hearing request. With regards to this issue, policy states:

### **Where to file a Hearing Request**

#### **All Programs**

Instruct clients or AHRs to deliver or mail (not fax) the hearing request to their local DHS office, attention hearings coordinator. The hearings coordinator receives the request on behalf of the department. Route all hearings-related material through the coordinator without regard to whom it is addressed.

If you receive a hearing request directly, date stamp it and forward it immediately to the hearings coordinator. If your local office is

not responsible for the disputed action, date stamp the request and forward it immediately to the correct local office, attention hearings coordinator....

### **Deadlines For Requesting a Hearing**

#### **All Programs**

The AHR, or if none, the client has 90 days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.... PAM Item 600, p. 4, effective 1/1/2008.

Unrefuted evidence on the record indicates that MRT denied claimant on 2/13/08. The department issued notice on 2/14/08. The department's notice clearly states an individual's hearing rights. The instructions state in part:

... Procedures for requesting a fair hearing: If you believe this action is illegal, you may request a hearing within 90 days of the date of this notice... Instructions... Deliver or mail completed form to your local DHS office...

After a careful review of the substantial and credible evidence on the whole record, and in applying the facts to federal law and State policy, this Administrative Law Judge finds that the AHR and/or client failed to file a timely hearing request in this case and thus, there is no jurisdiction under the law and policy for this Administrative Law Judge to proceed with a substantive review for the reasons set forth below.

First and foremost, the hearing request, if any, was simply untimely. Claimant has 90 days from the date of notice. None was filed.

██████████ in this case argues that the April 28, 2008 letter should be construed as a hearing request. However, the letter does not request a hearing but states that one had previously been requested. SOAHR cannot be held responsible to know what possible requests may be pending with the DHS at the time it receives correspondence from representatives.

██████ also argues that SOAHR should be considered part of the DHS. SOAHR is not part of the DHS. SOAHR is a division of DELEG, that oversees hearings for numerous administrative agencies within the State of Michigan (Treasury, Unemployment, etc.). It is not a division or part of the DHS. Claimant cannot prevail on this argument. Policy in PAM Item 600 is quite clear --“The request must be received anywhere in DHS within the 90 days.”PAM Item 600, p. 4. Claimant and/or claimant’s representative failed to do so.

██████ also argued that ██████ should be excused from arguing the jurisdictional issue as it was not prepared to go forward on a jurisdictional issue due to practices by SOAHR. Specifically, counsel argues that it is her understanding that in the past if there was a potential jurisdictional issue that she would be notified by a SOAHR employee. It is well-established that the requesting party has the burden of proof to establish jurisdiction prior to any substantive review. Counsel cited no authority which would bar an ALJ from ruling on jurisdiction at an administrative hearing under the Michigan Administrative Procedures Act, and/or applicable federal law.

Last, claimant’s representative stipulated that it miscommunicated with its client. ██████ miscommunication with its client cannot result in jurisdiction where there would otherwise be none.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides there is no jurisdictional under federal law or State policy where claimant failed to file a request within the 90 day jurisdictional window, and,

Thus, claimant's case is DISMISSED.

/s/ \_\_\_\_\_  
Janice G. Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 20, 2009

Date Mailed: March 20, 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.

JGS [REDACTED]

cc: [REDACTED]