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: 2009-14166
Issue No: 2006
Case No: [redacted]
Load No:
Hearing Date:
April 21, 2009
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, an in-person hearing was held on April 21, 2009.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance based upon its determination that claimant did not provide verification information in a timely manner?

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 in long-term care and was married.

(2) Her attorney applied for Medical Assistance benefits on August 29, 2008 and requested retroactive Medical Assistance benefits back to May 1, 2008.

(3) On September 3, 2008, the department caseworker requested a copy of annuities along with any changes.

(4) The department had information that claimant possessed four annuities.

(5) Claimant provided proof of the value of the annuities as of October 2, 2006 (the initial assessment date).

(6) However, claimant's representative did not provide current value or complete copies of the annuities account numbers [redacted], only their value.

(7) The department caseworker processed the initial assessment and denied the Medical Assistance benefits on August 17, 2008 because she did not have complete information on the annuities.

(8) On October 17, 2008, the department caseworker sent claimant's representative notice that claimant's application was denied.

(9) On October 31, 2008, the claimant's attorney reapplied for benefits and provided proof that the two annuities in question had been closed out.

(10) On January 14, 2009, claimant's representative filed a request for a hearing to contest the department's negative action.

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).

Claimant's representative testified that the annuities identified in the application information were annuities that claimant and her spouse owned on August 29, 2008. Claimant and her husband no longer owned the annuities, account numbers [redacted], on August 29, 2008 because they had been closed out and he did not know that the department wanted that information.

The department caseworker indicated that she did notify claimant's representative that the information was needed and gave claimant three extensions from August 29 to October 17, 2008 to provide information that the annuities had been closed in 2007.

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.

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. PAM, Item 105, p. 5.

All Programs

Clients must completely and truthfully answer all questions on forms and in interviews. PAM, Item 105, p. 5.

The client might be unable to answer a question about himself or another person whose circumstances must be known. Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. PAM, Item 105, p. 5.

Refusal to Cooperate Penalties

All Programs

Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. PAM, Item 105, p. 5.

Income reporting requirements are limited to the following:

- Earned income
  - Starting or stopping employment
  - Changing employers
  - Change in rate of pay
  - Change in work hours of more than 5 hours per week that is expected to continue for more than one month
- Unearned income
  - Starting or stopping a source of unearned income
  - Change in gross monthly income of more than $50 since the last reported change. PAM, Item 105, p. 7.

See PAM 220 for processing reported changes.

Other reporting requirements include, but are **not** limited to, changes in:

- Persons in the home
- Marital status
- Address and shelter cost changes that result from the move
- Vehicles
- Assets
- Child support expenses paid
- Health or hospital coverage and premiums

. Day care needs or providers. PAM, Item 105, pp. 7-8.

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.

VERIFICATION AND COLLATERAL CONTACTS

DEPARTMENT POLICY

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

. required by policy. PEM items specify which factors and under what circumstances verification is required.

. required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for MA, TMA-Plus or AMP without prior approval from central office.

. information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. PAM, Item 130, p. 1.

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

Verification is **not** required:

. when the client is clearly ineligible, or
. for excluded income and assets **unless** needed to establish the exclusion. PAM, Item 130, p. 1.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see "**Timeliness Standards**" in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

If neither the client nor you can obtain verification despite a reasonable effort, use the best available information. If **no** evidence is available, use your best judgment.

Exception: Alien information, blindness, disability, incapacity, incapability to declare one's residence and, for FIP only, pregnancy must be verified. Citizenship and identity must be verified for clients claiming U.S. citizenship for applicants and recipients of FIP, SDA and MA. PAM, Item 130, p. 3.

Timeliness Standards

All Programs (except TMAP)

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 at least once. PAM, Item 130, p. 4.

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.
-

Only **adequate** notice is required for an application denial. **Timely** notice is required to reduce or terminate benefits.

Exception: At redetermination, **FAP** clients have until the last day of the redetermination month **or** 10 days, whichever is later, to provide verification. See PAM 210. PAM, Item 130, p. 4.

TMAP
See PEM 647 regarding timeliness standards for TMA-Plus determinations. PAM, Item 130, p. 5.

Discrepancies

All Programs

Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. PAM, Item 130, p. 5.

AUTHORIZED REPRESENTATIVES

All Programs

An **Authorized Representative** (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf (e.g., to obtain FAP benefits for the group.) An AR is not the same as an Authorized Hearing Representative (AHR) PAM, Item 110, p. 6.

The AR assumes all the responsibilities of a client. See PAM 105. PEM, Item 110, p. 7.

The AR must give his name, address, and title or relationship to the client. To establish the client's eligibility, he must be familiar enough with the circumstances to complete the application, answer interview questions, and collect needed verifications. PAM, Item 110, p. 7.

In the original verification checklist sent out September 3, 2008 indicates that the department caseworker requested copies of the original trust and all changes on a written statement stating what assets are held in the trust and property taxes and insurance bills on the home for the past year, records of all assets that they have, proof of the current value and

availability of stocks, bonds, notes, savings certificates, annuities, IRA or 401K accounts, and complete copies of original annuities and all changes providing proof of availability, current value and proof of how annuity was funded. Initially, since the annuities have been closed out, claimant would not have necessarily known to provide the account information for the annuities that had been closed out. However, once the department contacted claimant's representative and let him know what information she needed, and gave claimant an extension of time to provide that information, this Administrative Law Judge finds that claimant's representative had ample opportunity to provide information that the annuities were indeed closed. That information was not provided to the department until October 31, 2008 at the new application period. The department's only receipt or letter from [redacted] indicating that the value of claimant's annuity on October 2, 2006 was [redacted]. There was no indication that the annuity was no longer in existence. Claimant has the burden of proving that she does not have assets which the department was able to discover when they determined that claimant did have some annuities as of October 2, 2006. Claimant's representative did not provide that verification that the annuity was no longer open as of October 17, 2008 and did receive three extensions of time in which to provide the information.

Claimant's hearing request is a compelling equitable argument to the exclusion of department policy.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

> Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

This Administrative Law Judge has no equity powers and cannot make decisions in contravention to department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant failed to provide verification information in a timely manner.

Accordingly, the department's decision is AFFIRMED.

/s/_____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 27, 2009

Date Mailed: May 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.

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.

LYL/vmc

cc: [redacted]