

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2009-25747 REHD
DHS Req. No: 2009-21431



Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge (ALJ) err in her affirmation of the Department of Human Services' determination that Claimant was eligible for the Adult Medical Program?

FINDINGS OF FACT

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

1. On April 16, 2009, ALJ Jana Bachman issued a Decision and Order in which the ALJ upheld the Department of Human Services' (DHS) determination that Claimant was eligible for the Adult Medical Program (AMP).
2. On May 8, 2009, the State Office of Administrative Hearings and Rules, Administrative Hearing for the Department of Human Services received the Claimant's Request for Rehearing/Reconsideration.
3. On July 13, 2009, the State Office of Administrative Hearings and Rules, Administrative Hearings for the Department of Human Services, granted the Claimant's request for reconsideration and issued a Notice of Reconsideration.
4. Findings of Fact 1 and 2 (the entire findings) from the Decision and Order mailed April 16, 2009, are hereby incorporated by reference.

5. Neither Claimant nor his family members (wife and step-daughter) are U.S. citizens. (Department Exhibit 1 and March 2008 hearing summary)
6. Claimant was hospitalized in October and November 2007. (March 2008 hearing summary)
7. Claimant's representative filed a medical assistance application for Claimant in November 2007.
8. Claimant indicated he was not a U.S. citizen on his November 2007 application. (Department Exhibit 1)

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 Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105; MSA 16.490(15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In her April 16, 2009, Decision and Order, ALJ Bachman found that Claimant was not a caretaker relative because he was stepfather to a minor child whose biological mother was caretaker relative. The ALJ further found that he did not meet eligibility criteria for the full Medicaid program. The ALJ upheld the Department of Human Services' (DHS) determination that Claimant was eligible for the AMP.

At hearing, the Claimant's representative stated the Claimant's issue as the Department's failure to follow its policy requirement to consider all the MA category options for Claimant. The Claimant's representative explicitly noted that the Department failed to consider and/or inform Claimant he may be eligible for alien status emergency services only MA because he was a non-immigrant alien working in the U.S. at the time he was hospitalized in October and November 2007. The Claimant's representative attempted to cross examine the Department witness as to whether DHS considered all of the MA category options for Claimant but the ALJ did not allow the questioning.

The Department's policy explicitly instructs its eligibility workers to consider all MA category options:

CHOICE OF CATEGORY

Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income.

Therefore, you must consider all the MA category options in order for the client's right of choice to be meaningful.

PEM 105, p 2 of 8, 7/1/09

The issue of whether DHS considered alien status emergency services only MA for Claimant was appropriate and the ALJ erred by prohibiting examination of the issue at hearing. The Department's Exhibit 1 demonstrates Claimant notified DHS he was not a U.S. Citizen at the time he filled out his application for medical assistance. Claimant's representative asserts Claimant was eligible for ESO at the time he applied, DHS should have considered this MA category option, and the ESO would have provided coverage for his 2007 hospitalization.

The Department's policy with regard to Citizenship/Alien Status is found in PEM 225. This policy requires DHS to determine the alien status of an applicant:

ALL PROGRAMS

Determine the alien status of each non citizen requesting benefits at application, member addition, redetermination and when a change is reported.

MA and AMP

Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors including residency. (See PEM 220).

PEM 225, pp. 1-2, 7/1/2009

PEM 225 also provides that an applicant with alien status may be eligible for limited Medicaid coverage through the Emergency Services Only (ESO) option:

MA coverage is limited to emergency services for:

- Persons with certain alien statuses or U. S. entry dates as specified in policy, see "CITIZENSHIP/ALIEN STATUS" section below, **or**
- Persons refusing to provide citizenship/alien status information on the application, **or**
- Persons unable or refusing to provide satisfactory verification of alien information.

PEM 225, pp. 2-3, 7/1/2009

The DHS did not provide evidence of whether it considered Claimant for ESO. During the hearing the DHS representative testified Claimant was considered for caretaker relative MA but he did not meet the criteria, and that he was approved for AMP. The DHS representative did not provide testimony or documentary evidence that Claimant was considered for ESO, or the reason Claimant was approved for AMP and not ESO.

There is no evidence that DHS followed Department policy and considered Claimant for ESO. The ALJ erred by prohibiting examination and evidence regarding whether DHS followed Department policy and considered Claimant for all MA category options, including ESO. For these reasons, the ALJ's April 16, 2009, Decision and Order must be reversed and the DHS must consider whether Claimant was eligible for ESO based on his November 2007 application.

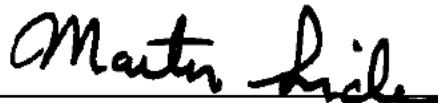
DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge erred when she decided the Department properly determined Claimant was eligible for the Adult Medical Program.

IT IS THEREFORE ORDERED that:

1. The Administrative Law Judge's decision dated April 16, 2009, is REVERSED.
2. DHS shall review the Claimant's November 2007 application for consideration of eligibility for all MA category options including ESO.

[REDACTED]
SOAHR Docket No: 2009-25747 REHD
DHS Reg. No: 2009-21431
Order of Reconsideration



Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: July 29, 2009
Date Mailed: July 30, 2009

***** NOTICE *****

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.