

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 2009-21809

Issue No.: 2011

Case No.: ██████████

Load No.: ██████████

Hearing Date:

January 28, 2010

Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on January 11, 2009. The Claimant was represented by his Authorized Representative (AR), ██████████

ISSUE

Did the Department properly open the Claimant's Medical Assistance (MA), and retroactive MA?

FINDINGS OF FACT

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

1. On June 27, 2008, the Claimant's mother filed an application for MA and retroactive MA.
2. On August 21, 2008, the claimant's AR filed a second application for MA and retroactive MA.

3. On October 1, 2008, the department denied the application for excess assets.
4. On March 24, 2009, the Claimant. Through his AR. requested a 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 (formerly known as the Family Independence Agency) 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).

Here, the department argues that because the claimant died on [REDACTED], both the application filed by claimant's mother on June 27, 2008, and the subsequent application for MA and retroactive MA are invalid because neither party had the authority to do so.

However,

Application may be made for a deceased person. (PAM 110, p.4).

The department cites PAM 110 p.9,

Persons Providing Medical Care

MA Only

Persons who provide medical care to the client, or their agents, should **not** act for the client when there is a relative, guardian or friend who is willing and able to act. If a court has appointed a guardian for a client's estate (i.e., his income and assets), the guardian is usually expected to act for the client.

An application may be made for newborns surrendered under the Safe Delivery Law, (MCL 712.1-712.20) by the provider hospital, child-placing agency, and court appointed lawyer-guardian ad litem or prospective adoptive parent.

A department employee may apply on behalf of a member of the employee's family or a child committed to, or placed with, the department by court order.

MA Only

An authorization to represent is a form of a power of attorney. When a person who gave the authorization dies, the power of attorney ends. After death, the person does not exist as a legal entity, so no one can represent the person. However, if a person dies while the application is pending, the application should be processed.

An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a representative of the estate.

These two sections may, on their face, seem to be in conflict except the later citation from page 9 is in reference to a sub heading "Persons Providing Medical Care."

In this instance, the claimant's mother filed the application.

MA Only

Application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, specified relative or any other person provided the person is at least age 18 or married. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or specified relative the person must have a signed authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian. (PAM 110, p.8).

Here, the claimant's mother filed the original application on June 27, 2008, as she was authorized to do under PAM 110.

Regarding the retroactive application:

RETRO MA APPLICATIONS

MA Only

Retro MA coverage is available back to the first day of the third calendar month prior to:

The current application for FIP and MA applicants and persons applying to be added to the group. (PAM 115, p.8).

Therefore, this ALJ finds that the department must return to the June 27, 2008, application and apply retroactivity from that date.

DECISION AND ORDER

The Administrative Law Judge based on the above findings of fact and conclusions of law, REVERSES AND ORDERS the Department to re-register the MA application for June 27, 2008, and apply retroactivity from that date.



Michael J. Bennane
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 3/29/2010

Date Mailed: 3/29/2010

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 60 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.

MJB/jlg

cc:

