

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: 2009-21932
Issue No: 2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 8, 2009
Kalamazoo 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 Tuesday, December 8, 2009. The claimant appeared via three-way conference call and testified on his own behalf.

ISSUE

Did the department properly deny the claimant's Medical Assistance (MA) application because the claimant was a no-call, no-show for his required independent medical consultative examination?

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 30, 2008, the department received a MA application with retroactive benefits on behalf of the claimant from [REDACTED]

(2) On November 5, 2008, the department caseworker submitted the medical records received to the Medical Review Team (MRT) for MA eligibility determination.

(3) On November 19, 2008, the MRT returned a deferral request for an internist exam to be completed by [REDACTED] where the appointment was scheduled for [REDACTED] at 1:00 p.m. (Department Exhibit 33-35)

(4) On February 26, 2009, the department caseworker was notified that the claimant was a no-call, no-show for his independent medical consultative examination. (Department Exhibit 32)

(5) On March 16, 2009, the MRT denied the claimant's MA application due to insufficient evidence.

(6) On March 16, 2009, the department caseworker sent the claimant and [REDACTED] a notice that the claimant's application was denied due to insufficient evidence. (Department Exhibit 1-4)

(7) On March 26, 2009, the claimant requested a hearing contesting the department's negative action stating that [REDACTED] was his authorized representative.

(8) On November 13, 2009, [REDACTED], withdrew their representation of the above claimant that was received at the Kalamazoo DHS.

(9) During the hearing, the claimant testified that he had a stroke on [REDACTED] where he was hospitalized and left cognitively impaired.

(10) During the hearing, the claimant stated that he moved in May 2009 where he did not get the notice for the doctor's appointment, but he did get the denial notice and the hearing notice that was sent to [REDACTED] which was the claimant's previous address.

(11) During the hearing, the department caseworker testified that the claimant's doctor's appointment notice was not returned to the department as undeliverable.

(12) During the hearing, the claimant testified that [REDACTED] did not assist him in getting to his appointment.

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).

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.

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the client when they need your help to obtain it. Such help includes the following:

- . Scheduling medical exam appointments
- . Paying for medical evidence and medical transportation
- . See PAM 815 and 825 for details. PEM, Item 260, p. 4.

All Programs

Clients must completely and truthfully answer all questions on forms and in interviews. 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.

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.

LOCAL OFFICE RESPONSIBILITIES

All Programs

Ensure client rights described in this item are honored and that client responsibilities are explained in understandable terms. Clients are to be treated with dignity and respect by all DHS employees. PAM, Item 105, p. 8.

In the instant case, the claimant was hospitalized in [REDACTED] as the result of a stroke that left him cognitively impaired. A subsequent application was filed for MA with retroactive benefits on October 30, 2008 by [REDACTED]. The MRT required additional information where an appointment was scheduled for [REDACTED] at 1:00 p.m. Since [REDACTED], [REDACTED] was the authorized representative for the claimant, their practice is to call the claimant, remind the claimant, and send a taxi to pick up the claimant and drop off the claimant off for scheduled appointments. As Administrative Law Judge, I do not know what happened in this case, but the claimant was not assisted by [REDACTED] to be present for his appointment.

The claimant stated that he did not get the notice, but he did get the denial notice and the hearing notice. The records in the file reflect that the notice was sent on January 30, 2009 to the claimant at his address at [REDACTED]. Subsequently, [REDACTED] withdrew their representation on November 13, 2009. The claimant testified credibly during the hearing that [REDACTED] did not assist him in getting to his appointment for the [REDACTED] independent medical consultative examination.

The department correctly followed policy in submitting the medical to MRT, scheduling an exam, and sending the notice to the claimant and his authorized representative. If [REDACTED] had not been representing the claimant, the department caseworker would have assisted the claimant with transportation and any additional assistance that he required [REDACTED]

██████████ failed to do so to the detriment of the claimant. The claimant should be given an opportunity to attend his independent medical consultative examination with the assistance of the department caseworker.

Therefore, even though the department has established that it was acting in compliance with department policy by determining that the claimant's MA application should be denied because of his failure to appear for his independent medical consultative examination. The claimant's authorized representative, ██████████ did not assist the claimant in making sure that he made his appointment as is what is required of an authorized representative.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department appropriately denied the claimant's application for MA on October 30, 2008 with retroactive MA to July 2008 because the claimant's authorized representative, ██████████ failed to assist the claimant in attending his scheduled appointment. The claimant is cognitively impaired from his stroke and does require assistance with transportation and in attending his scheduled examinations.

Accordingly, the department's decision is **REVERSED**. The department is ordered to reschedule the claimant's MRT required independent medical consultative examination and provide assistance and transportation for the claimant to attend the scheduled appointment.

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

Date Signed: January 10, 2010

Date Mailed: January 11, 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 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.

CGF/vmc

cc:

