

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: 2009-2353

Issue No: 2015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 2, 2009

Genesee 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, a telephone hearing was held on June 2, 2009. Claimant did not appear or testify at the hearing. Claimant was represented at the hearing by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) benefits based upon its determination that claimant was not a caretaker relative?

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 18, 2007, the Department of Human Services received an application requesting Medical Assistance for claimant.

(2) The DHS-1171 dated October 18, 2007 indicated claimant was living at [REDACTED] [REDACTED] with his daughter [REDACTED] and his girlfriend, [REDACTED] and [REDACTED] mother. On November 9, 2007, the caseworker called claimant's girlfriend and her mother to verify when claimant moved into the home as the daughter was active on her mother's case and the mother had never reported that claimant was living with them.

(3) [REDACTED] mother, [REDACTED] stated that claimant had not moved in but planned to when he was released from the hospital.

(4) On [REDACTED], it was verified that claimant was still in the hospital.

(5) The application for Medical Assistance caretaker relative was denied on November 21, 2007 as the claimant was not living with his daughter and therefore he was not a caretaker relative.

(6) The Department of Human Services did not send a DHS-3503, Verification Checklist, to the claimant or the authorized representative because the application was denied for not meeting the program requirements.

(7) On November 21, 2007, the department caseworker sent claimant notice that his application was denied.

(8) On June 6, 2008, claimant's representative filed a request for a hearing to contest the department's negative action.

CONCLUSIONS OF LAW

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 claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal a department action. 45 CFR 205.10.

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.

Time period for requesting hearing. A household shall be allowed to request a hearing on any action by the State department or loss of benefits which occurred in the prior 90 days. Action by the State department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits. 7 CFR 273.15(g).

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

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. Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280.

Granting a Hearing

All Programs

AH may grant a hearing about any of the following:

- . Denial of application and/or supplemental payments
- . Reduction in the amount of program benefits or services
- . Suspension or termination of program benefits or services
- . Restrictions under which benefits or services are provided
- . Delay of any action beyond standards of promptness
- . For **FAP only**, the current level of benefits or denial of expedited service

MA Only

AH may grant a hearing about any of the following:

- . Community spouse's income allowance
- . Community spouse's income considered in determining the income allowance
- . Initial asset assessment (but only if an application for MA has actually been filed for the client)
- . Determination of the couple's countable assets or protected spousal amount
- . Community spouse's resource allowance. PAM, Item 600, pp. 3-4.

HEARING DECISIONS

All Programs

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision **unless**:

- . the ALJ believes that the applicable law does **not** support DHS policy; **or**
- . DHS policy is silent on the issue being considered. PAM, Item 600, p. 28.

In the instant case, the notice of denial of negative action was sent out on November 21, 2007. The request for hearing was not filed until June 6, 2008. Therefore, this hearing request is not timely and the hearing request is hereby dismissed. However, this Administrative Law Judge will also address the substantive issue.

MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. This is a FIP-related Group 2 MA category. All eligibility factors must be met in the calendar month being tested. A caretaker relative is a person who meets all the following requirements: except for temporary absences, the person lives with the dependent child. The person is the parent of the dependent child or the specified relative other than the parent who acts as the parent for the dependent child. Specified relative is defined later in this item. Acting as a parent means providing physical care and/or supervision. (PEM, Item 135, p.1)

In the instant case, it was established on the record that [REDACTED] had an open Food Assistance Program, Family Independence Program, and Medical Assistance benefit case which did not include claimant as a part of the benefit group. The evidence on the record indicates that claimant was not living with [REDACTED] at any time prior to the time that he went into the hospital. The department caseworker indicated that she contacted [REDACTED] who told her that claimant was not living with her and that he would be moving in after he was discharged from the hospital. The department caseworker then determined that since claimant was not living with the family prior to his admission to the hospital, he could not be considered a member of the benefit group.

The Michigan Identification Card attached to the file indicates that claimant's legal address was [REDACTED]. Claimant's representative presented a signed piece of paper indicating that [REDACTED] in the months of October and November 2007 and it was signed by [REDACTED]

This Administrative Law Judge finds that the department has established by the necessary, competent, material and substantial material on the record that it was acting in compliance with department policy when it determined that claimant was not living at the [REDACTED] address before his entrance into the hospital. Therefore, he is not a caretaker relative because he cannot establish that he was living together or living with others sharing a house, where family members usually sleep except for temporary absences. Claimant could also not establish that he was temporarily absent. A temporarily absent person is considered in the home. A person's absence is temporary if its location is known, and there is a definite plan for his return and he lived with the group before the absence. In this case, claimant cannot establish that he lived with the group before his absence. He was not a part of the benefit group prior to his getting sick and being placed in the hospital and the department caseworker's statement which is attached to the application is considered credible based upon the fact that the department caseworker contacted the benefit group member who stated that claimant did not live with her and that he would be moving in after he was discharged from the hospital. The record should indicate that claimant is not claiming disability and his representative noted that claimant is not disabled on the record. There was no other medical program to proceed with for this claimant as the only other two Medical Assistance programs would caretaker relative or disability and he did not qualify for either program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides 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 was not eligible to receive Medical Assistance benefits based upon

being a caretaker relative because he was not a part of the program group and did not reside with his girlfriend and child at her address prior to his entrance into the hospital.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: July 13, 2009

Date Mailed: July 13, 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:

