

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Decedent

Reg. No: 2009-27135
Issue No: 2000/2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 9, 2010
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 March 9, 2010. A third party liability specialist, [REDACTED], appeared seeking Medicaid (MA)/retro-MA application reinstatement and processing.

ISSUE

Has third party liability specialist I [REDACTED] established the authority necessary to file a November 21, 2008 Medicaid (MA)/retro-MA application on the decedent's behalf?

FINDINGS OF FACT

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

(1) The decedent (an adult male) without a spouse died on November 17, 2008.

(2) Four days later, specifically, on November 21, 2008, [REDACTED] (a third party liability specialist) filed an MA/retro-MA application seeking a disability allowance during the decedent's last illness.

(3) If that application had been approved, the medical expenses the decedent incurred at [REDACTED] before his death would have been covered by MA, and in turn, [REDACTED] would have financially benefited from the hospital's recovery of said funds.

(4) In life, the decedent never authorized [REDACTED] to act on his behalf; however, the decedent's adult sister signed a form on October 30, 2008, purporting to transfer authority on her brother's behalf to [REDACTED] for purposes of establishing his MA eligibility by application processing on appeal, should the matter proceed to hearing (Client Exhibit A, pg 1).

(5) In life, claimant never designated in writing his sister as his authorized representative for application filing purposes; in fact, the only court-appointed authorization existing in the evidence of record was conferred several months after the decedent died.

(6) Specifically, on June 8, 2009, the [REDACTED] authorized one of [REDACTED] attorneys to act as the Personal Representative of the decedent's estate based on a priority appointment secondary to [REDACTED] creditor status (Client Exhibit B, pgs 3 and 4).

(7) On August 12, 2009, the [REDACTED] Register transferred Personal Representative status to a different [REDACTED] attorney because the first one no longer worked for that company (Client Exhibit C, pg 2).

(8) On November 21, 2008, [REDACTED] registered and proceeded to process the MA/retro-MA application [REDACTED] filed.

(9) On February 20, 2009, the local DHS office mailed written notice to [REDACTED] at their address-of-record denying their application for failure to provide specifically requested verification required for application processing (Department Exhibit #2 and #8).

(10) This denial occurred after the department honored four written requests from [REDACTED] to extend the deadline for submission of the required verification, in addition to conducting a local DHS office search using their computerized [REDACTED] in an unsuccessful effort to help locate proof of the decedent's citizenship status (Department Exhibit #3, #4, #5, #6, #10; Client Exhibit D, pgs 1 and 2).

(11) On May 26, 2009, Berrien County DHS received [REDACTED] hearing request protesting the department's MA/retro-MA application denial based on failure to provide verification of the decedent's citizenship status.

(12) [REDACTED] then forwarded the required Hearing Summary (DHS-3050) and certain proposed exhibits to the State Office of Administrative Hearings and Rules (SOAHR) for scheduling purposes.

(13) On June 26, 2009, SOAHR's supervisory Administrative Law Judge mailed [REDACTED] instructions on how to correctly proceed as the decedent's Authorized Hearings Representative (AHR).

(14) These instructions state:

Unless you send to us a Probate Court Order or court-issued "Letters of Authority" naming you or another person as Guardian or Conservator or Personal Representative of the estate, an administrative hearing will not be scheduled (ALJ Exhibit I).

(15) An Authorized Hearings Representative (AHR) is defined by departmental policy as follows:

The person who stands in for or represents the client in the hearing process and has the legal right to do so. This right comes from one of the following sources:

- Written authorization, signed by the client, giving the person authority to act for the client in the hearing process.
- Court appointment as a guardian or conservator.
- The representative's status as legal parent of a minor child.
- The representative's status as attorney at law for the client.
- For **MA only**, the representative's status as the client's spouse, or the deceased client's widow or widower, **only** when no one else has authority to represent the client's interests in the hearing process. Bridges Program Glossary (BPG), pg 4.

(16) When [REDACTED] provided the requested Letters of Authority, SOHAR scheduled the hearing and it was held on March 9, 2010.

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).

At hearing, [REDACTED] representative argued the department's policy in BAM Item 110 (pgs 7 and 8) grants any adult relative the authority to file an MA/retro-MA application on another's behalf if severe physical or mental limitations might prevent that individual from

applying for himself/herself. This representative summarily concludes the decedent's sister conveyed to [REDACTED] her authority to do just that by signing the authorization form [REDACTED] provided to her on October 30, 2008.

[REDACTED] position fails for two reasons. First, the existing physical/mental limitation section of departmental policy in BAM Item 110 applies only to FIP, CDC, SDA and AMP applications. This is self-evident by the limiting subheading language beneath the policy's broader, general topic addressing who may be an authorized representative for FIP/CDC/SDA/AMP application filing. Second, even if this policy did apply to MA applications (which it does not) [REDACTED] presented absolutely no competent, credible testimony or documentary evidence at hearing to establish the decedent in this case was physically or mentally incapable of conveying authorization to represent by his own signature at any time before he died. As such, [REDACTED]'s argument fails at the threshold level because, quite simply, they never possessed the authority to file an MA/retro-MA application on the decedent's behalf. The correct MA-only policy states as follows:

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 he client, by the client, client's spouse, parent(s) or legal guardian.

The application form must be signed by the client or the individual acting as his authorized representative.\BAM Item 110, pg 8.

At hearing, [REDACTED] representative also argued the decedent's sister qualifies as a "specified relative," and thus, no additional signed authorization to act on the decedent's behalf was needed. Again, this position is untenable because the department's definition of a specified relative is narrowly drawn. Specifically the applicable policy states:

MA Only

An authorized representative must be:

- An adult child or stepchild.
- A specified relative, see [BEM 135](#).
- Designated in writing by the client.
- Court appointed.
- A representative of an institution (e.g., jail, prison) where the client is in custody. BAM Item 110, pg 9.

This policy cross-references BEM Item 135 for the definition of a specified relative and one thing is certain. BEM Item 135 applies only when Group 2 Caretaker Relative MA is being applied for, not when a disability-based MA application is being filed. Put simply, BEM Item 135 allows certain specified relatives acting as parents to a minor child(ren)(i.e., providing physical care and/or supervision to them) to qualify for MA on that basis alone, without determining whether or not that specified relative is disabled under the disability rules. In short, the specified relative provisions of the department's policy are inapplicable to disability-based MA/retro-MA applications like the one at issue in this case. Consequently, third party liability specialist [REDACTED] has put forth no basis to support reinstatement and reprocessing of the MA/retro-MA application they filed on November 21, 2008.

However, even if [REDACTED] had established at the threshold level that they did, in fact, possess the legal authority necessary to file the disputed application, they would be unsuccessful in prevailing on the substantive merits of this case because the local DHS office acted in complete compliance with the department's verification policy located in BAM Item 130, which states in relevant part:

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM 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. BAM Item 130, p. 2.

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. BEM 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. BAM Item 130, p. 1.
- .

MA and AMP

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification you request. Refer to above policy for citizenship verifications. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to three times.

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email), the date of the transmission is the receipt date.

Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a DHS representative are considered to be received the next business day.

Send a case action notice when:

- The client indicates refusal to provide a verification, **or**
- The time period given has elapsed.

Only **adequate** notice is required for an application denial. **Timely** notice is required to reduce or terminate benefits. BAM Item 130, pg 5.

The facts of record are clear. Not only did DHS extend [REDACTED] deadline for submission of the requested citizenship verification four times (when the above-referenced policy only requires three extensions), they also assisted [REDACTED] in trying to locate this verification through the use of their computerized [REDACTED]. Under these circumstances, the department's denial of the disputed MA/retro-MA application also was correct on substantive, policy grounds.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides third party liability specialist [REDACTED] [REDACTED] lacked the authority necessary to file a November 21, 2008, MA/retro-MA application on the decedent's behalf and [REDACTED] failed to provide the requested verification necessary for application processing.

Accordingly, the status quo must remain intact. The disputed application must remain denied. **SO ORDERED.**

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 31, 2010

Date Mailed: March 31, 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 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.

MBM/db

cc:

