

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: 2009-5397
Issue No: 2017
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2009
Kent 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 telephone hearing was held on Tuesday, April 14, 2009. The claimant personally appeared and testified on her own behalf.

ISSUES

(1) Did the department properly determine that the claimant did not provide the required asset information based on her asset review for her Medical Assistance (MA) case?

(2) Did the department properly determine and process the claimant's eligibility for the Medicare Savings Plan based on her September 17, 2008 MA application?

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 claimant was a recipient of MA benefits.
- (2) On January 30, 2008, the claimant was sent a Verification Checklist, DHS-3503, requesting asset information for MA consideration that was due February 10, 2008. (Department Exhibit A)
- (3) On February 26, 2008, the department caseworker closed the claimant's MA case because she did not receive verification of the claimant's assets. (Department Exhibit B-C)
- (4) The case closure affected the claimant's eligibility for QMB, Part B Medicare payment, which required the claimant to make the payment herself since she no longer qualified for the Medicare Savings Program.
- (5) On September 17, 2008, the claimant reapplied for MA benefits. (Department Exhibit F)
- (6) On October 24, 2008, the claimant's MA case was opened where she was put on a spend-down and eligible for the SLMB benefits under the Medicare Savings Plan. (Department Exhibit I)
- (7) On October 29, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

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 manuals provide the following relevant policy statements and instructions for caseworkers:

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

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.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

An opportunity for a hearing shall be granted to an applicant who requests a hearing because their claim for assistance is denied, or to any recipient who is aggrieved by any department action resulting in suspension, reduction, discontinuance, or termination of assistance. Michigan Administrative Code Rule 400.903(1).

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code (MAC)

R 400.901-.951. Any hearing request which protests a denial, reduction, or termination of benefits must be filed within 90 days of the mailing of the negative action notice. MAC R 400.902; MAC R 400.903; MAC R 400.904.

In the present case, the claimant was a recipient of MA with a spend-down. Her annual review was due in February 2008. The claimant stated during the hearing that she did not receive the Verification Checklist that was sent on January 30, 2008. However, the claimant did receive the case closure letter on February 26, 2008.

The claimant reapplied for MA benefits on September 17, 2008 with her case being opened on October 24, 2008. The claimant's case was opened with a spend-down, but she was eligible for the Medicare Savings Plan. The Medicare Savings Plan is a Federal program where the State pays for the claimant's Medicare Part B premium.

Although the claimant was eligible for MA and the Medicare Savings Plan on October 24, 2008, the actual Medicare Savings Plan takes three to four months to be activated. As a result, the claimant is responsible for those payments and is not reimbursed for those payments. However, the claimant should be able to make the Medicare premium that she pays a deduction on her FAP benefits, which would entitle her to more food stamps for the contested period until the Medicare Savings Plan is activated.

The issues with the claimant's February 26, 2008 closing of her Medicaid case are not timely because they are beyond the 90 day time limit of a negative action notice. The claimant is encouraged to stay in contact with her worker and if her benefits are cancelled, she should promptly reapply and preserve her rights by asking for a hearing.

Therefore, the department has established that it acted in compliance with department policy by determining that the claimant was not eligible to be reimbursed for the Medicare Savings Plan while she was waiting for the standard time for the claimant to be activated, but she is eligible to have her Medicare, Part B premium added as an insurance and expense on her FAP benefits, which should entitle her to receive additional FAP until her Medicare Savings Plan is activated.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department appropriately determined the claimant's eligibility for MA. However, the department is ORDERED to redo the claimant's FAP benefits by giving her credit for the insurance premium of the Medicare, Part B premium that she paid for the contested months until her Medicare Savings Plan is initiated.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: June 1, 2009

Date Mailed: June 1, 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.

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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:

