

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

By: [REDACTED]

Reg. No: 2009-10219

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 29, 2009

Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's son's request for a hearing. After due notice, a telephone evidentiary hearing was held on July 29, 2009. Claimant was represented at the administrative hearing by her son, [REDACTED] POA. [REDACTED] was represented by [REDACTED]

[REDACTED]

Also present at the administrative hearing were: [REDACTED], spouse to [REDACTED] [REDACTED] Attorney, present on behalf of Temporary Guardian [REDACTED], who was assigned by the Van Burne Probate Court on behalf of claimant.

Parties appearing on behalf of the department: James Tippin, FIM; Jackie Hiler, E.S.; Cheryl Doglew, Adult Protective Services.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's 5/29/08 Medicaid (MA) Long Term Care (LTC) application due to excess assets?

FINDINGS OF FACT

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

(1) Claimant has been a resident of a long-term care facility since “September/October 2003.” (Administrative Hearing Brief submitted by [REDACTED], page 1) Claimant was represented at the administrative hearing by her son, [REDACTED], who has POA.

(2) Claimant’s son was represented by [REDACTED]
[REDACTED]

(3) Claimant has been a recipient of MA/LTC since approximately February, 2004.

(4) In 2007, a new DHS caseworker was assigned to claimant’s case. The Hearing Summary completed for the case herein states in part: “...4. Requested information back to the date of the first application in 2004 due to worker error in determining eligibility.”

(5) In December, 2007, claimant’s case was reviewed and denied in January, 2008 for failure to provide verification. This case closure is not at issue herein.

(6) Claimant subsequently reapplied on 5/29/08.

(7) On 9/3/08, the DHS denied due to “excess assets.” The only PEM cite is “PEM 400.”

(8) The parties stipulated at the administrative hearing that the 5/29/08 application denied on 9/3/08 for excess assets is the application at issue herein.

(9) On 11/19/08, claimant filed a hearing request.

(10) Counsel attempted to submit a brief along with Exhibits A-S to SOAHR. SOAHR refused to accept the brief. The brief and exhibits were not available to the Administrative Law Judge at the administrative hearing.

(11) The department proposed to submit over 625 exhibits without identifying relevency, materiality, or whether any of the documents were duplicates.

(12) As of the administrative hearing neither party had prepared a summary, statement of facts, brief, or argument. The parties agreed to have the record held open for the submission of briefs and/or summary statements/arguments.

(13) Subsequent to the administrative hearing, counsel submitted a brief along with Exhibits A-S. The DHS submitted a 2-page statement containing 14 statements which cites purported facts from 1991 to 2009, not in chronological order. These 14 lines of statements are followed by a section titled "policy" listing 15 sections from PEM Items 400 and 405, without identifying the relevency of the cited policy pages to the action herein, to the 14 statements, and/or any of the 625 Exhibits. Line 16 states only "PEM 405" with no other statement regarding the relevency of citing this section as policy applicable. Line 17 states "Joint owners and transfers: page 3." Line 18 states "Transfers for another purpose: page 9."

(14) Counsel argues in her brief that there are four parcels of property that are either homestead or jointly held and not available.

(15) The DHS at the administrative hearing identified three assets--"farmland, equipment, money from the sale of property." Upon inquiry as to whether these three assets constitute all of the assets in excess, the DHS responded: "I don't have them all listed. This is part of them. The assets are in the hearing packet."

(16) The department and counsel disagree at to what assets are at issue and/or were denied by the DHS herein, and under what authority.

(17) At the administrative hearing, both parties argued policy on assets and policy on divestments.

(18) The DHS took no action in this case regarding divestment. The department did not do a divestment calculation, did not apply a divestment penalty, and did not issue any notice regarding any divestment 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).

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds the record is inadequate to make a decision herein and thus, reverses the department ordering the department to reprocess this case with specificity.

Relating to the issues of notice, as noted in the Findings of Fact, the DHS-1150 Eligibility Notice denied claimant's application for the following reason: "excess assets." While this may be sufficient in some cases, in this case, there were over 625 exhibits along with the department's testimony that all the assets were "in the packet." Federal law and state policy is quite specific with regards to what must be contained in a notice of case action to an interested party under the Medicaid program administered by the Michigan DHS. PAM 220 states in part:

A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.

- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

PAM Item 220, p. 1-2.

Applicable federal regulations are found at 42 CFR 431.200-250; 435.912-.913; 42 CFR 435.919.

MAC R 400.902 is quite specific with regards to the types of information which must be contained in a notice of case action. MAC R 400.902.

This Administrative Law Judge finds that the notice was not specific enough to identify which parcels of property are at issue and/or why they are in excess assets. As already noted, the department identified three different types of assets plus ‘others in the 625 exhibits.’ Counsel identified four parcels of property. The denial notice simply states “excess assets.” This Administrative Law Judge cannot discern with any reasonable clarity which asset(s) and why each asset did not meet the department’s asset policy. Moreover, at the hearing, the department cited divestment policy. As already noted in the Findings of Fact, there was no divestment taken herein-- there was no divestment calculation, nor divestment penalty, and no notice was issued to claimant regarding any divestment proposed action. Thus, the notice fails to meet the federal and state notice requirements.

With regards to general evidentiary rules, MAC R 400.913 applicable to the DHS rules with regards to evidence states that an Administrative Law Judge “... shall follow the rules of evidence as applied in a non-jury civil case in circuit court.” MAC R 400.913. The rules of circuit court and the general rules of evidence under Michigan law place the burden of proof presumption in a civil action on the parties who took the action. MRE 301. See also PAM Item 600.

In the DHS Administrative Hearings Handbook, FIA Publication 827 (Rev. 10-02) under Chapter VI, evidence has a paragraph on the burden of proof. That section defines the burden of proof as:

The burden of proof is the responsibility to produce adequate evidence to establish a fact or facts. The side with the burden of proof must present enough evidence so the judge believes the fact's existence is more likely than its non-existence... Administrative Hearings Handbook, p. 14.

The DHS was unable to articulate its position with any reasonable clarity; the DHS failed to meet its burden of proof.

As to general evidentiary considerations, Administrative Law Judges are charged under the Michigan Administrative Procedures Act to assess evidence as to its relevancy, materiality, or whether it is unduly repetitious. Administrative Procedures Act 24.275. See also PAM 600. The undersigned Administrative Law Judge was unable to make an assessment as to the evidentiary packet in this case with regards to the department's position as the department was unable to articulate its position.

For these reasons, and the reasons stated above, the DHS failed to present relevant, accurate and material evidence.

With regards to issuing a legally sufficient decision and order, there are a number of areas where Administrative Law Judges are charged with a duty to issue a decision and order that is legally sufficient. Among these are the requirements found in 42 CFR 431.244 wherein the contents of a decision and order must meet certain specific requirements:

... identifies the regulation supporting the decision.... In a *de novo* hearing, the decision must--

- (1) Specify the reasons for the decision; and
- (2) Identify the supporting evidence and regulation. 42 CFR 431.244.

Also applicable to issuing a sufficiently legal decision and order is MAC R 400.917, which requires the decision to be based exclusively on the record and evidence introduced at the administrative hearing. MAC R 400.917.

Likewise, the Michigan Administrative Procedures Act 24.285--Final Decision and Orders requires Administrative Law Judges to issue a decision which is based exclusively on the evidence on the record. That decision must set forth the findings of facts which control the decision and the authority for any conclusion of law. Michigan Administrative Procedures Act 24.285.

Under these dictates, this Administrative Law Judge cannot make a ruling in this case and discharge the duties required by MAPA based on the evidence presented by the department. See 42 CFR 431.244 and MAPA 24.285.

This Administrative Law Judge orders the department to reinstate the application date of May 29, 2008 and to reassess eligibility. If the department finds claimant ineligible due to excess asset or assets, the department is ordered to specifically identify that asset on the denial notice (i.e., identifying real property with a common address), state the specific reason that the department finds that the asset does not meet the DHS's eligibility requirements(s), and state the specific authority/policy item which supports the department's determination for each asset. In identifying any parcel of property, the department is ordered to identify that property with specificity, such as the address of the property. Should the department not find in favor of claimant, claimant shall retain a right to a hearing for 90 days from the date of the new notice, should claimant dispute the outcome of the new application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

The department is ORDERED to reinstate the 5/29/08 application, and reprocess that application in accordance with the decision herein. The department shall issue notice to counsel and claimant. Claimant shall retain a right to a hearing for 90 days should claimant dispute the outcome of the new processing.

/s/

Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 27, 2009

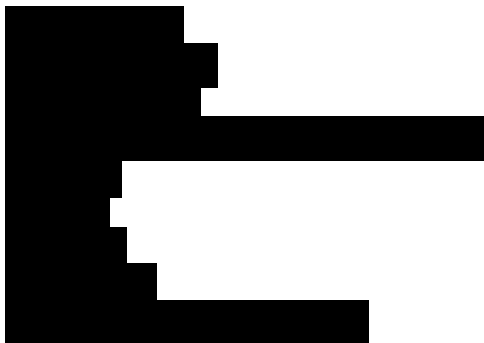
Date Mailed: October 29, 2009

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 mailing date of the rehearing decision.

JS/cv

cc:

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