

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: 2009-11117
Issue No: 2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 13, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 conference hearing was held on October 13, 2009 and claimant was not present. Claimant was represented by [REDACTED]. Donna Campbell, ES, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) application for failure to attend scheduled doctors appointments?

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 January 30, 2008, an application for MA benefits, requesting retroactive coverage to October 2007, was filed on claimant's behalf by [REDACTED] the authorized representative. (Claimant Exhibit A, pgs. 3-27)

(2) The application was sent to the Medical Review Team, who issued a deferral requesting additional medical verifications and two consultative examinations.

(3) On August 15, 2008, the department issued a Verification Checklist with a due date of August 25, 2008 for the submission of medical records, a completed DHS 49-G, and for claimant to attend and bring her drivers license to two doctor appointments on August 26, 2008. (Department Exhibit 1, pg. 3)

(4) On August 26, 2008, [REDACTED] sent a faxed response to the Verification Checklist to the department indicating that the claimant did not attend the doctor appointments, [REDACTED] had not been able to contact claimant, and requested that the Medical Review Team make a determination based on the available medical records. (Claimant Exhibit A, pgs. 32-33)

(5) On September 5, 2008, the department denied the MA application for failure to attend the doctor appointments. (Department Exhibit 1)

(6) On December 2, 2008, a hearing request was filed on claimant's behalf by [REDACTED] [REDACTED] contesting the denial of the MA application.

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).

Under PAM 105, clients must cooperate with the local office in determining initial and ongoing eligibility. The department is to request verification when required by policy, when

required by local office option, or when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. PAM 130. The department is to allow at least 10 days to provide the verification requested. PAM 105. A negative action notice is to be sent when the client indicates refusal to provide a verification or the time period given has elapsed. PAM 130. The department must also help clients who need and request assistance in obtaining verifications, and may extend the time limit, if necessary. PAM 130.

In the present case, the Medical Review Team (MRT) reviewed claimant's application to make a disability determination and issued a deferral requesting additional medical information and two consultative examinations. The department issued a Verification Checklist to claimant and the authorized representative with a due date of August 25, 2008 for the submission of medical records, a completed DHS 49-G, and for claimant to attend and bring her drivers license to 2 doctor appointments on August 26, 2008. (Department Exhibit 1, pg. 3)

The department did not receive a response from claimant or the authorized representative to the Verification Checklist by the August 25, 2008 due date. It is noted that it would not have been possible to complete the Verification Checklist, as written, by the due date. The Verification Checklist required claimant to bring her drivers license and attend 2 doctor appointments on the August 26, 2008, the day after the due date. However, this was not the reason the department denied the application.

The authorized representative did send a fax to the department on August 26, 2009, the first date that the Verification Checklist could have been completed in its entirety. The fax indicated that the claimant did not attend the doctor appointments, [REDACTED] had not been able to contact claimant, and requested that the MRT make a determination based on the available medical records. (Claimant Exhibit A, pgs. 32-33)

The department did not send the available medical records back to the MRT. The department denied the application on September 5, 2008 for failure to attend the scheduled doctor appointments. Under PEM 260, the claimant had a responsibility to cooperate and attend the scheduled examinations:

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the customer 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 PAM 825 for details.

A client who refuses or fails to submit to an exam necessary to determine disability or blindness **cannot** be determined disabled or blind and you should deny the application or close the case. It is not necessary to return the medical evidence to MRT for another decision in this instance.

PEM 260 pg. 4.

In the present case, the MRT issued a deferral for additional medical information and the two consultative examinations because additional medical evidence was needed to make a disability determination. Notice of the appointments was sent to claimant and the authorized representative. Claimant has not provided any reason she was unable to attend the examinations. The department followed applicable policy in PEM 260 by denying the application when claimant failed to attend the medical examinations requested by the MRT.

Claimant's representative also argued that the denial notice was not timely sent to [REDACTED] [REDACTED]. The department credibly testified that the Application Eligibility Notice was mailed to both claimant and [REDACTED] on September 5, 2008. Claimant's representative indicated that their office never received the notice the department mailed. This ALJ understands that occasionally mail is lost or miss-delivered to another address and is not

returned to the post office. However, when [REDACTED] contacted the department about not receiving a denial notice for this application, the department did re-send a copy of the notice on November 24, 2008. [REDACTED] received this copy of the denial notice and attached it to the Hearing Request. (Claimant Exhibit A, pg. 34) The Hearing Request was timely filed within the 90 days from the date of the denial allowed under PAM 600. A timely hearing request was filed and a hearing has been held on the issue that led to the denial of the application. Accordingly, claimant's case has not been penalized by the late delivery of the denial notice.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department followed applicable policy in denying the MA application when claimant failed to attend two doctor appointments necessary to make a disability determination.

Accordingly, the department's MA determination is AFFIRMED.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 20, 2009

Date Mailed: October 21, 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.

2009-11117/CL

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.

CL/cv

cc:

