

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: 2009-13088
Issue No: 3012
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 18, 2010
Washtenaw 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 request for a hearing. After due notice, an in-person hearing was held on February 18, 2010. Claimant was represented at the administrative hearing by his legal guardian—[REDACTED]. [REDACTED] was represented at the administrative hearing by [REDACTED] of [REDACTED]

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's retro MA application of July, 2080?

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 is legally incapacitated and is a resident of a long-term care facility.

(2) On 8/20/08, claimant's guardian- [REDACTED]-assigned by the Probate Court of [REDACTED] County filed an MA application on behalf of claimant. Claimant applied for 1 month of retro MA-July, 2008.

(3) Claimant's application was date-stamped August 20, 2008 in [REDACTED] County—Claimant Exhibit D.

(4) Claimant was subsequently approved from August, 2008, forward. The department did not issue notice as to approval or denial regarding claimant's retro MA application. The DHS indicated at the administrative hearing that claimant's July, 2008 retro month was denied.

(5) The department had no information or evidence regarding the reason for the denial of the retro month. The department testified that it transferred the case to [REDACTED] County and that the case was transferred back to [REDACTED] County.

(6) Claimant's SSI was opened 8/1/08.

(7) The only month in dispute is the retro month of July, 2008.

(8) The department testified at the administrative hearing that there was no evidence as to what was done in [REDACTED] County in this case, as [REDACTED] County did not forward the information.

(9) The failed department to meet its burden of proof.

(10) The department testified that it could not communicate with claimant's representative. Contrary evidence in the file indicates that the department in fact did communicate with claimant's representative as the department issued a verification checklist to the representative. In response to the inconsistencies, the department's worker stated that this is what she "was instructed to do at a staff meeting."

(11) On 12/30/2008, claimant's representative filed a hearing request.

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).

General verification policy and procedure is found in numerous items. These items state in pertinent part to the case herein:

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- . Determine eligibility.
- . Calculate the level of benefits.
- . Protect client rights. PAM, Item 105, p. 1.

All Programs

Clients must completely and truthfully answer all questions on forms and in interviews. PAM, Item 105, p. 5.

The client might be unable to answer a question about himself or another person whose circumstances must be known. Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. PAM, Item 105, p. 5.

Responsibility to Report Changes

All Programs

This section applies to all groups **except** most FAP groups with earnings.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes must be reported **within 10 days**:

- . after the client is aware of them, or
- . the start date of employment. PAM, Item 105, p. 7.

Verifications

All Programs

Clients must take actions within their ability to obtain verifications. DHS staff must assist when necessary. See PAM 130 and PEM 702. PAM, Item 105, p. 8.

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms (including the DCH-0733-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English. PAM, Item 105, p. 9.

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. PAM, Item 130, p. 2.

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed and the client has not made a reasonable effort to provide it. PAM, Item 130, p. 4.

MA Only

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed. PAM, Item 130, p. 4.

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. PEM 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. PAM, Item 130, p. 1.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. PAM, Item 130, p. 1.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

ELIGIBILITY DECISIONS

Denials

All Programs

If the group is ineligible **or** refuses to cooperate in the application process, send a denial notice within the standard of promptness. PAM, Item 115, p. 15.

Also applicable to the case herein is policy regarding entitlement in retro months:

Retro MA Application

MA Only

MA coverage is available back to the first day of the third calendar month prior to:

- ...
- For SSI, entitlement to SSI. ... BAM Item 115, p. 8.

In this case, the department's testimony was confusing, and inconsistent. Specifically, at the onset, the department indicated that this case was originally filed and transferred to ██████████ County from ██████████. The department further contended that it had no knowledge or information as to any verification checklist or other types of requests as it did not have information from ██████████ County regarding these issues. However, the representative brought forth evidence that the case was in fact filed in ██████████ County on ██████████. See Claimant Exhibit D. In either case, the department has the burden of proof regardless as to who is individually presenting the case and/or which county or individual actually processed the case. The department cannot meet its burden of proof by saying that the individual testifying for the hearing was on vacation and thus, could not take appropriate action.

Under BAM Item 115 cited above, claimant is entitled to have retro MA coverage available back to the third calendar month prior to entitlement to SSI. Evidence on the record is that claimant was entitled to SSI effective at the month of August, 2008. The department argued at the administrative hearing that the case had to be sent to the MRT. However, the department could not cite any authority which would override existing policy which entitles an individual to retro MA when there is entitlement to SSI.

The department spent much time on issues regarding representation and communication with the guardian and/or ██████████. However, the department inconsistently acted based upon its contention that it was not allowed to speak with IMN in that at one point it sent ██████████ a verification checklist. In response as to why the department would communicate with ██████████ after

arguing that it was not allowed to communicate with claimant's representative, the department responded that the worker was instructed to do in a staff meeting. The department's argument was nonsensical.

Under the general verification policy and procedure cited above, the department has failed to follow its policy and procedure and, failed to meet its burden of proof in clearly indicating what was done in this case and why. Under BAM Item 115, claimant is entitled to retro MA. Claimant only disputes July, 2008. The department is ordered to process eligibility for the one retro month at issue herein—July, 2008. If the department is in need of any verification(s), then the department is ordered to follow its verification policy and procedure by issuing a proper form and giving claimant a minimum of ten days to respond to the requests on the verification request, along with a minimum of one extension.

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 not correct.

Accordingly, the department's denial of claimant's July, 2008 retro MA month is hereby REVERSED.

The department is ORDERED to reprocess eligibility for the retro month of July, 2008 without sending this case to MRT. Claimant has met the disability standard pursuant to the SSI determination. The DHS has yet to determine income and asset eligibility for July, 2008. If the department needs any further information and/or verification(s) with regards to the July, 2008

month, the department shall follow its policy and procedure under general verification policy and rules. If the department cannot carry out this order within ten days, it is ORDERED that the department shall initiate the actions as set forth herein.

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

Date Signed: March 18, 2010

Date Mailed: March 22, 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 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/lk

cc:

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