

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: 2009-16235  
Issue No: 2018  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 10, 2009  
Genesee 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 November 10, 2009. Claimant personally appeared and testified. She was assisted by the [REDACTED]

ISSUE

Did the department properly deny claimant's December 30, 2008 Medicaid Waiver 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) On December 30, 2008, the department got claimant's mail-in Medicaid Waiver application.

(2) Claimant received intense assistance from the Director and a caseworker at the [REDACTED] when completing this disputed application and in providing the mandatory waiver information in a timely manner.

(3) Specifically, before mailing the [REDACTED] included with claimant's application the waiver form which establishes she became eligible for full waiver services on November 5, 2008 (Client Exhibit A).

(4) The department subsequently denied claimant's application on other grounds; whereupon, the [REDACTED] and claimant requested a hearing to dispute the denial.

(5) Claimant's hearing was held on November 10, 2009.

(6) The sole departmental witness had no active role in processing this application and no personal knowledge about what the department actually received except through hearsay from the worker who handled the case who was not present on hearing day.

(7) Both claimant's witnesses from the [REDACTED] testified credibly they mailed her mandatory waiver form along with the disputed application, and also, they noted they contacted the department after receiving claimant's denial in an effort to resolve this matter outside the contested case proceeding (administrative hearing).

#### 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).

The department's enabling policy at BEM 106, pg 1 states:

This waiver is called the MI Choice Waiver Program. This waiver program provides home and community-based services for aged and disabled persons who, if they did not receive such services, would require care in a nursing home.

Services provided under this waiver program must be less costly for MA than the cost of nursing home services for the total number of waiver clients, not per person.

The MI Choice waiver is **not an MA category**, but there are special eligibility rules for people approved for the waiver. See "DHS Local Office Responsibilities" below.

The [REDACTED] is claimant's designated waiver agent specifically charged with the responsibility to verify her medical eligibility for the waiver program and to assist her in obtaining requested verifications needed during application processing.

The department's witness testified at hearing claimant met all of the eligibility criteria for waiver services and she would have been approved if the waiver form had not been purportedly missing in December 2008.

This Administrative Law Judge finds claimant's witnesses credible hearing testimony conclusively establishes the waiver form **was** mailed to the department with claimant's application. The department failed to provide any credible rebuttal evidence to the contrary (See Finding of Fact #6 and #7 above). The fact that the submitted waiver form was most likely inadvertently separated, misrouted, lost, destroyed or misfiled after it reached the department simply cannot be held against claimant. As such, the department's denial action cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously denied claimant's December 30, 2008 Medicaid Waiver application.

Accordingly, the department's action is REVERSED and this case is returned to the local office for application reinstatement and processing in accordance with the department's waiver rules. **SO ORDERED.**

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

Date Signed: November 19, 2009

Date Mailed: November 20, 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 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

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