

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: 2009-23491

Issue No: 2012

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 6, 2010

Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 January 6, 2010.

ISSUE

- (1) Did the Department properly deny Claimant's application for MA benefits?
- (2) Did the Department properly determine that [REDACTED] was not authorized to apply for MA benefits on Claimant's behalf?

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 signed an Authorization To Release of Information form on July 17, 2008, giving [REDACTED] authority to act as his authorized representative for the purposes of applying for Medicaid.

(2) Claimant died on August 26, 2008.

(3) On October 29, 2008, the Department received Claimant's application for FAP and MA benefits, which had been filed on his behalf by [REDACTED]

(4) After receiving Claimant's application, the Department sent Claimant a Verification Checklist, requesting that Claimant attend an interview and submit needed verification.

(5) A copy of the Verification Checklist was not sent to [REDACTED] only to Claimant's current address of record.

(6) On November 5, 2008, the Verification Checklist that was sent to Claimant was returned to the Department and marked: "moved, left no address, unable to forward."

(7) On November 5, 2008, the Department denied Claimant's application based on inability to locate him.

(8) On December 29, 2008, [REDACTED] requested that Claimant's application be re-registered and processed; however, the Department denied the request on the basis that [REDACTED] failed to establish that it had authorization to file an application on Claimant's behalf.

(9) On February 2, 2009, the Department received a Hearing Request Form, completed by [REDACTED] on Claimant's behalf.

(10) [REDACTED] made it clear in the hearing request that it was protesting the department's refusal to process Claimant's application for MA and Retro MA only.

(11) On February 26, 2009, the [REDACTED] was appointed the Special Personal Representative for the estate of Claimant to pursue Medicaid benefits only.

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 contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Department's Policy Manuals provide the following relevant policy statements and instructions for caseworkers:

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. BAM, Item 105

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. BAM, Item 105

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the client 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 BAM 815 and 825 for details. BEM, Item 260

LOCAL OFFICE RESPONSIBILITIES

All Programs

Ensure client rights described in this item are honored and that client responsibilities are explained in understandable terms. Clients are to be treated with dignity and respect by all DHS employees. BAM, Item 105

Informing the Client

All Programs

Inform people who inquire about:

- . the DHS programs available, including domestic violence comprehensive services.
- . their right to apply.

Provide specific eligibility information on any program they are interested. BAM, Item 105

AUTHORIZED REPRESENTATIVES

All Programs

An **Authorized Representative** (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf (e.g., to obtain FAP benefits for the group.) An AR is not the same as an Authorized Hearing Representative (AHR) BAM, Item 110

The AR assumes all the responsibilities of a client. See BAM 105 and BEM, Item 110

MA Only

Application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, specified relative or any other person provided the person is at least age 18 or married. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or specified relative the person must have a signed authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian.

The application form must be signed by the client or the individual acting as his authorized representative.

When an assistance application is received in the local office without the applicant's signature or without a signed document authorizing someone to act on the applicants behalf you must do the following:

- Register the application as a request if it contains a signature.
- Send a DHS-723, Incomplete Application Notice, to the agency or the individual who completed the application.
- Send a DHS-330, Pending Application Notice, to the client explaining the need for a valid signature. The signature page of the application may be copied and sent to the agency or individual who filled out the application with the notice.

- Allow 10 days for a response. You cannot deny an application due to incompleteness until 10 calendar days from the date of your initial request in writing to the applicant to complete the application form or supply missing information, or the initial scheduled interview.
- Record the date the application or filing form with the minimum information is received. The application must be registered and disposed of on ASSIST, using the receipt date as the application date.

An application received from an agency is acceptable if it is signed by an individual and is accompanied by written documentation from the client authorizing the agency to act as their authorized representative. BAM, Item 110

**SPECIFIED
RELATIVE
DEFINED**

A specified relative is any of the following:

- Parent.
- Aunt or uncle.
- Niece or nephew.
- Any of the above relationships prefixed by grand, great or greatgreat.
- Stepparent.
- Sister or brother.
- Stepsister or stepbrother.
- First cousin.
- First cousin once removed (i.e., a first cousin's child).
- The spouse of any person above, **even** after marriage is ended by death or divorce. BEM, Item 135

In this case, Claimant signed an Authorization To Release of Information form on July 17, 2008, giving [REDACTED] authority to act as his authorized representative for the purposes of applying for Medicaid. Subsequently, on

August 26, 2008, Claimant died. On October 29, 2008, [REDACTED] submitted an application for MA and retro MA on Claimant's behalf.

This Administrative Law Judge finds that [REDACTED] did not have the authorization to file an application on behalf of the deceased claimant. The authorization to represent a client or a power of attorney may be revoked at any time by the person who gave the authorization. A dead person can neither give nor revoke nor affirm the authorization. After death, the person does not exist as a legal entity, so no one can represent the person. MCL 700.5504. In order for [REDACTED] to file an application on behalf of a deceased client, [REDACTED] would need Letters of Authority from Probate Court or authorization from a specified relative. Pursuant to MCL 700.1302, the Michigan Probate Court retains sole and exclusive jurisdiction over the estate of the decedent. Only a probate court can create a decedent's estate and appoint a personal representative, special fiduciary or temporary personal representative to act on behalf of that estate. [REDACTED] did not receive their Probate Court authorization to represent Claimant until February 26, 2009, which was after the Department denied Claimant's application and [REDACTED] request to reprocess Claimant's MA application.

In conclusion, the Department's refusal to reprocess Claimant's MA application was in accordance with the applicable law and policy. [REDACTED] was not the authorized representative of Claimant at any time relevant to this matter. Further, the Department properly denied the application based on its inability to locate Claimant and obtain the verification that it needed to process Claimant's MA application. (BAM Item 130)

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that:

(1) The Department was acting in compliance with department policy when it denied Claimant's application for MA based on an inability to locate Claimant.

(2) [REDACTED] . lacked standing to file an application on behalf of a deceased claimant.

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

/s/ _____
Marya A. Nelson-Davis
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 23, 2010

Date Mailed: February 23, 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 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.

SMB/db

cc:

[REDACTED]