

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: 2010-11669
Issue No: 2015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 15, 2010
Calhoun 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 claimant's request for a hearing. After due notice, a three-way telephone hearing was held on June 15, 2010, with claimant's representative, [REDACTED], the county office, and the Administrative Law Judge. Claimant did not appear.

ISSUES

- (1) Is claimant's hearing request untimely?
- (2) Did the DHS properly deny claimant's MA application on the grounds of group composition?

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 June 22, 2009, the local office received an MA application filed by [REDACTED], on behalf of claimant, with retro back to May, 2009.

(2) Claimant listed the following address on the application: [REDACTED], [REDACTED].

(3) The Notice of Hearing was sent to [REDACTED]. The notice was returned from the post office stating: "Return to sender; moved left no address; unable to forward."

(4) Claimant listed three different phone numbers as contact phone numbers on the DHS application. The DHS social worker in this case drew arrows from two of the phone numbers indicate that they are no longer in service.

(5) [REDACTED] contends that claimant's 16-year-old daughter was living with claimant in claimant's household. Contrary to evidence shows that claimant's 16-year-old daughter in fact had an MA case open. Claimant's daughter resides at a different address. Claimant's daughter applied on her own, signed an application, and listed a separate address.

(6) Claimant indicated she is not disabled. Claimant does not meet eligibility requirements including being under 21, over 65, or a caretaker relative.

(7) On July 10, 2009, the DHS denied claimant's application stating that claimant was not eligible as claimant's daughter was "not eligible. Individual is eligible for this program on another case."

(8) The department stipulated at the administrative hearing that it failed to give notice to [REDACTED] filed a hearing request on November 19, 2009--beyond 90 days. The 90-day period is tolled. Jurisdiction is proper.

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).

ISSUE #1

Generally, DHS policy and procedure as well as federal law requires an individual to request a hearing within 90 days of the date of notice:

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

The department must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.

In this case, evidence shows that the denial notice was dated July 10, 2009 and the hearing request was received on November 19, 2009. The department stipulated it failed to list [REDACTED] on the computer system which would trigger notices to [REDACTED]. Policy in BAM requires where there is a representative, that the representative be listed in the system and be given notice regarding the disposition of an application. The department failed to follow its policy and procedure with this regard. As such, this ALJ finds that the 90-day window is tolled; jurisdiction is proper.

ISSUE #2

The second issue deals with group composition for caretaker relative MA. Applicable policy and procedure to the case herein is found in numerous items, including BEM and BAM Items 105, 135, 211, 260, 500, and 640.

An individual is not entitled to duplicate benefits.

In this case, evidence on the record indicates that claimant's 16-year-old daughter's MA case opened in May, 2009. Claimant applied in June, 2009 with May, 2009 retro, and purportedly listed her daughter on the application which would make her a caretaker relative eligible. However, there is no eligibility where claimant is not a caretaker relative for caretaker MA. There is no evidence that claimant meets any other criteria such as under 21, over 65, or disabled.

Claimant did not appear for the administrative hearing. Claimant's representative did not know her whereabouts and yet, claimant's representative argued at the administrative hearing that he was told by claimant that her daughter was living in the house. The phone numbers claimant listed on the application were disconnected. Claimant's mail containing the Notice of Hearing was returned as undeliverable. Claimant did not attend the administrative hearing; claimant was not available for testimony and/or cross-examination. Claimant's daughter did not appear at the administrative hearing.

The representative argued at the administrative hearing that the department provided no proof that claimant's daughter was not living with claimant. Claimant's representative misunderstands the burden of proof. Contrary to the representative's belief, at application, the burden to establish eligibility is on the applicant, not the department. However, at the same time, the DHS did in fact provide evidence that the daughter was not living with claimant. The DHS

evidence shows claimant's daughter, in fact resided at a different address and had an open case. An individual is not entitled to duplicate welfare benefits. The representative did not bring forth any evidence to establish eligibility.

After careful review of the substantial and credible evidence on the whole record, this ALJ finds that claimant does not have eligibility when her only potential dependent which would make her eligible as a caretaker relative already was receiving benefits and had an open case on her own behalf at a different address. Eligibility is not shown. The department acted correctly.

DECISION AND ORDER

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

Accordingly, the department's denial is hereby UPHELD.

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

Date Signed: June 30, 2010

Date Mailed: July 13, 2010

JGS/tg

cc:

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