

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on [REDACTED]. After due notice, a telephone hearing was held on [REDACTED]. The Claimant did not appear for the hearing, but was represented by [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Medical Assistance (MA) eligibility?

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 [REDACTED], the Department received an application for Medical Assistance (MA) submitted by the Claimant's representative, [REDACTED] Inc.
2. On [REDACTED], the Department denied the Claimant's application for Medical Assistance (MA).
3. The authorized hearing representative denied receipt of the Department's denial of the Medical Assistance (MA) application.
4. The Department received the Claimant's request for a hearing on [REDACTED].

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600. The State Office of Administrative Hearings and Rules ("SOAHR") may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments
- Reduction in the amount of program benefits or service
- Suspension or termination of program benefits or service
- Restrictions under which benefits or services are provided
- Delay of any action beyond the standard of promptness
- For FAP only, the current level of benefits or denial of expedited service

BAM Item 600, page 1. Additionally, for MA purposes, SOAHR may grant a hearing on other issues not applicable here, such as community spouse income, allowance, asset assessment, etc.

In this case, the Claimant/Representative submitted a disability based application for Medical Assistance (MA) on [REDACTED]. The Department denied the application on March 8, 2008, because the Claimant is not disabled. The Authorized Hearings Representative at some time became aware of the denial (as evidenced by the [REDACTED]), even though the representative denies receiving a copy of the Department's denial notice. Importantly, the Representative is not protesting the determination finding the Claimant not disabled and thus the denial of Medical Assistance (MA). Instead, the Representative is requesting that the Department continue processing the [REDACTED], application.

Pertinent department policy and applicable law dictates that:

- The AHR or, if none, the customer has 90 calendar days from the date of the written notice of case action to request a hearing. BAM, Item 600, p. 5.

- A claimant shall be provided [REDACTED] from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).
- The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action. 45 CFR 205.10.
- The agency 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.

This hearing request is HEREBY DISMISSED because the request for a hearing was not made within 90 days of the date of notice.

In the alternative, even if this Administrative Law Judge were able to take jurisdiction of this issue, Claimant's representative argues that lack of notice to the representative results in lack of, or insufficiency of notice. Department policy also indicates that the application forms and each written notice of case action inform clients of their right to a hearing. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify:

- The action being taken by the department; and
- The reason(s) for the action; and
- The specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. See BAM 220. BAM, Item 600, page 1.

In this case, the department did provide the client with notice as is required by Department policy. The notice did not return to the department as undeliverable. The Representative contends, without citing to any authority, that it is entitled to independent notice of denial as opposed to a copy of the previous denial.

There are two types of written notice: adequate and timely.

A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

An adequate notice is a written notice sent to the client at the same time an action takes effect (not pending). Adequate notice is given in the following circumstances:

- Approval/denial of an application.
- Increase in benefits. BAM Item 220, pages 1-2.

The Representative is not entitled to a hearing solely on this issue when notice was sent to the client. The representative stands in the shoes of the client and does not retain rights which are separate from the client's. Ultimately, Request for Hearing is DISMISSED for lack of timeliness.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that the Request for Hearing is DISMISSED.

/s/ _____
[Redacted Signature]

Date Signed: __4/7/11_____

Date Mailed: __4/7/11_____

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 60 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.

[Redacted]