

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

IN THE MATTER OF:



Reg. No: 2010-16646
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
March 9, 2010
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 March 9, 2010. Claimant personally appeared and testified. Claimant deceased October 27, 2009 [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

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 April 28, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On October 6, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
- (3) On October 8, 2009, the department caseworker sent claimant notice that his application was denied.
- (4) On January 11, 2010, [REDACTED] filed a request for a hearing to contest the department's negative action.

- (5) On February 3, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested a copy of the death certificate and a copy of the hospital records [REDACTED]
- (6) The hearing was held on March 9, 2010. At the hearing, claimant's representative waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on March 10, 2010.
- (8) On March 17, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and stated that prior information requested was not received. The department is to contact the family to find out what hospital or medical office was treating the claimant before his death. Obtain medical records from [REDACTED] [REDACTED] not send back without this information.
- (9) The hearing was held on March 9, 2010, as of February 7, 2010, no new information has been sent in by claimant's representative.
- (10) This Administrative Law Judge closed the record and proceeded to decision.
- (11) On the date of his death claimant was a 50-year-old man whose birth date is [REDACTED]. His death certificate indicates that he died from pulmonary embolism, anemia, Barrett's esophagus, and chronic alcohol abuse and the manner of his death was natural. Claimant deceased [REDACTED]
- (12) The notice of the department action was sent to claimant and claimant's representative on October 8, 2009.
- (13) The request for a hearing was received in the department on January 5, 2010, after claimant's death.

CONCLUSIONS OF LAW

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 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department

will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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) and the Program Reference Manual (PRM).

In the instant case, [REDACTED] was an authorized hearing representative for claimant on the date of the filing of the application. However, [REDACTED] authorization to represent claimant ended with the claimant's death on October 27, 2009.

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, p. 1.

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, p. 5.

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, p. 4.

A client who refuses or fails to submit to an exam necessary to determine disability or blindness **cannot** be determined disabled or blind and you may deny or close the case. BEM, Item 260, p. 4.

All Programs

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

FAP Only

Do **not** deny eligibility due to failure to cooperate with a verification request by a person **outside** the group. In applying this policy, a person is considered a group member if residing with the group and is disqualified. BAM, Item 105, p. 5.

Refusal to Cooperate Penalties

All Programs

Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM, 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. BAM, Item 105, p. 7.

Income reporting requirements are limited to the following:

- . Earned income
 - .. Starting or stopping employment
 - .. Changing employers
 - .. Change in rate of pay
 - .. Change in work hours of more than 5 hours per week that is expected to continue for more than one month
- . Unearned income
 - .. Starting or stopping a source of unearned income
 - .. Change in gross monthly income of more than \$50 since the last reported change. BAM, Item 105, p. 7.

See BAM 220 for processing reported changes.

Other reporting requirements include, but are **not** limited to, changes in:

- . Persons in the home
- . Marital status
- . Address and shelter cost changes that result from the move
- . Vehicles
- . Assets
- . Child support expenses paid
- . Health or hospital coverage and premiums
- . Day care needs or providers. BAM, Item 105, pp. 7-8.

For TLFA only, the client must report to the specialist any month the work requirement is not fulfilled.

Explain reporting requirements to all clients at application, redetermination and when discussing changes in circumstances. BAM, 105, p. 8.

Verifications

All Programs

Clients must take actions with in their ability to obtain verifications. DHS staff must assist when necessary. See BAM 130 and BEM 702. BAM, Item 105, p. 8.

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, p. 8.

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. BEM 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. BAM, Item 130, p. 1.

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

Verification is **not** required:

- . when the client is clearly ineligible, or
- . for excluded income and assets **unless** needed to establish the exclusion. BAM, Item 130, p. 1.

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 Check list, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. BAM, Item 130, p. 2.

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

If neither the client nor you can obtain verification despite a reasonable effort, use the best available information. If **no** evidence is available, use your best judgment.

Exception: Alien information, blindness, disability, incapacity, inability to declare one's residence and, for FIP only, pregnancy must be verified. Citizenship and identity must be verified for clients claiming U.S. citizenship for applicants and recipients of FIP, SDA and MA. BAM, Item 130, p. 3.

Timeliness Standards

All Programs (except TMAP)

Allow the client 10 calendar days (**or** other time limit specified in policy) to provide the verification you request. If the client cannot provide the verification despite a reasonable effort, extend the time limit at least once. BAM, Item 130, p. 4.

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. BAM, 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. BAM, Item 130, p. 4.

In the instant case, BAM, Item 130, p. 5, indicates that the department is to allow the claimant 10 calendar days to provide verification information that has been requested. If the client cannot provide the verifications despite a reasonable effort the department is to extend the time limit up to 3 times. In the instant case, this Administrative Law Judge left the record open for over a year to allow for the additional information which was requested by the State Hearing Review Team. Claimant's representative did not provide the additional medical information. Therefore, the department appropriately denied the claimant's application for failure to provide verification information.

Department policy requires that all clients have the right to request a hearing. The following people have the authority to exercise this right by signing a hearing request:

- an adult member of the eligible group, or
- the client's authorized hearing representative.

The request for a hearing must be made in writing and signed by one of the persons listed above. The request must be a signature. Faxes or photo copies of signatures are acceptable. A hearing request with a client's signature, name and authorized hearing representative (AHR) who is authorized to stand in for or represent the client at the rest of the hearing process. An AHR, or if none, the client, might express dissatisfaction with the department action orally or in writing without specifically requesting a hearing. The department is to verify an authorized representative prior authorization unless the authorized hearing representative is the client's Attorney at Law, parent or for MA only, spouse. The relationship of the parent or spouse must be verified only when it is questionable. SOAHR will deny a hearing request when required verification is not submitted. The following documents are acceptable verification sources:

- probate court order or court issued letters of authority, naming the person as guardian or conservator, or
- probate court documentation verifying the person has applied for guardianship or conservatorship
- authorization signed by the client after authorizing this person to represent the client in the hearing process; and
- birth or marriage certificate naming the person a parent or spouse (BEM, Item 600, pp. 2-3)

Under Michigan Law, all rights and authority granted by a power of attorney end at the death of a principle.

- The Michigan Probate Court retains sole and exclusive jurisdiction over decedent's estate. MCL 700.1302
- A patient advocate designation ends with the death of the principle. MCL 700.5510
- A power of attorney designation ends with knowledge of the death of the principle. MCL 700.5504.

After death, the principle no longer exists as a separate legal entity: consequently, an estate must be created to handle remaining business and financial concerns outstanding at the time of his or her death. Only the probate court can create a decedent's estate and appoint a personal representative, special fiduciary temporary personal representative to act on behalf of that estate. Which includes pursuing potential gain from the Medicaid (MA) program, pursuant to a claim pending at the time of the principle's death. Matter of estate of Breas Bois, 140 Mich App, 364 NW 2D 702 (1985) (which has not been overturned) states explicitly that a creditor of decedent who dies intestate is not an interested party entitled to be appointed as personal representative of an estate.

Claimant's authorized hearing representative does not fit any of the categories that would allow them legal standing to proceed on behalf of a deceased client, in the absence of a probate court order. In short, decedent's authorized representative or formal power of attorney all lack standing to pursue the deceased applicant's claim within the Administrative Hearings process without being determined by the probate court to be a personal representative or special fiduciary. Administrative Hearings should not address associative issue of disability above circumstances because there is no longer standing to bring the Administrative Tribunal when the claimant dies. Death does not establish a person's disability for the month of his death, BAM, Item 260, p.1.

However, there is no dispute as to claimant's disability or lack thereof in this case as the Medical Review Team determined that claimant did not meet the disability criteria for MA and retro MA benefits. The State Hearing Review Team denied claimant's application based upon the fact that it did not have sufficient information and requested additional verification information which it did not receive from claimant's authorized representative or claimant's AHR who clearly had ample time in which to provide the verification information. Based upon the fact that the new information was not provided claimant's representative, this Administrative Law Judge finds that the State Hearing Review Team's decision must be UPHeld and finds that there is insufficient evidence to find that claimant is disabled for purposes for MA or retro MA benefit eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance benefits. The original denial was based on the fact that claimant's impairment's lack duration. Once the State Hearing Review Team requested additional medical information, claimant's representative failed to provide the verification information for approximately a year's time. Therefore, this Administrative Law Judge finds that claimant's application was properly denied for failure to establish duration and for failure to provide verification information.

Accordingly, the department's decision is AFFIRMED. In addition, this Administrative Law Judge also finds that there is no evidence to establish that the authorized hearings representative who filed the hearing request and appeared on decedent's behalf at the March 9, 2010 Administrative Hearing had authority from the probate court to proceed on claimant's behalf.

Accordingly, the hearing request, protesting the denial of claimant, decedent's, Medical Assistance and retroactive Medical Assistance application is hereby DISMISSED at this time. The death certificate provided by [REDACTED] indicates that claimant did die on October 27, 2009.

Landis

/s/

Y. Lain

Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 30, 2011

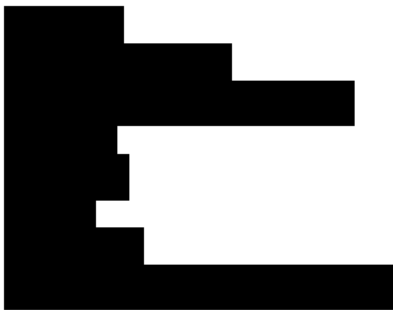
Date Mailed: March 31, 2011

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 receipt date of the rehearing decision.

LYL/alc

cc:

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