

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

IN THE MATTER:

[REDACTED]

Reg No. 201032636  
Issue No. 2000  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: September 30, 2010  
Alpena 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on September 30, 2010. Claimant personally appeared. He was assisted by [REDACTED] his authorized representative from [REDACTED].

**ISSUE**

Has claimant presented a hearable issue?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. On November 28, 2007, the department mailed a negative action notice to claimant and to his authorized representative (CMH) which notified them he was not eligible for Disabled Adult Child (DAC) Medicaid benefits (Department Exhibit #4).
2. On January 28, 2010, the department received a hearing request from his authorized representative protesting this denial.
3. On August 3, 2010, the Deputy Director of the State Office of Administrative Hearings and Rules (SOAHR) mailed a notice to claimant and to his authorized representative which states in relevant part:

A review of the hearing request in this case by Administrative Hearings indicates that the appeal may not be timely with regard to one or more of the issues raised therein. It is provided in the Michigan Administrative Code R 400.904, that any hearing requested which protests a Department action under the Michigan Social Welfare Act must be filed within 90 days. Therefore, the Administrative Law Judge will consider as the first issue at the hearing whether the appeal is timely for each issue raised in the hearing request... (Department Exhibit #1).

4. Claimant's hearing was held in the local DHS office on September 30, 2010.
5. Claimant's authorized representative stipulated on the record at hearing that claimant's hearing request was not filed until January 28, 2010, because she did not work at CMH in 2007, and thus, she did not discover the purported "error" in claimant's Medicaid case sooner.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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).

The facts of record in this case are undisputed, as is the following law and policy:

#### **Granting a Hearing**

##### **All Programs**

AH may grant a hearing about any of the following:

- . Denial of application and/or supplemental payments

- . Reduction in the amount of program benefits or services
- . Suspension or termination of program benefits or services
- . Restrictions under which benefits or services are provided
- . Delay of any action beyond standards of promptness.

**MA Only**

AH may grant a hearing about any of the following:

- . Community spouse's income allowance
- . Community spouse's income considered in determining the income allowance
- . Initial asset assessment (but only if an application for MA has actually been filed for the client)
- . Determination of the couple's countable assets or protected spousal amount
- . Community spouse's resource allowance. PAM, Item 600, pp. 3-4.

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.

The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal a department action. 45 CFR 205.10.

Claimant's authorized representative has demonstrated no basis in fact to reverse SOAHR's determination that this hearing request was untimely made. As such, the status quo must remain intact. The department's action must remain upheld. However, claimant's authorized representative should be aware she may file another Medicaid application on claimant's behalf at any time.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has not presented a hearable issue.

Accordingly, the department's action must remain UPHELD.

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

Date Signed: October 25, 2010

Date Mailed: October 25, 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.

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MBM/db

cc:

