

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: 2010-37917
Issue No: 2000
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2010
St. Clair 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, a telephone hearing was held on June 30, 2010. Claimant did not appear to testify as claimant is deceased as of [REDACTED]. Claimant was represented at the hearing [REDACTED].

ISSUE

Whether [REDACTED] can act as an authorized representative or authorized hearing representative in this case?

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 November 6, 2009, [REDACTED] filed an application for Medical Assistance and retroactive Medical Assistance benefits on claimant's behalf.
- (2) A verification checklist was sent to [REDACTED] and to claimant requesting checking and savings account verification on December 10, 2009.

(3) The verification of a fax transmittal to [REDACTED] was not in the case so another verification checklist request for assets was sent to [REDACTED] on January 25, 2010.

(4) The verification checklist was faxed to [REDACTED] directly with a due date of February 5, 2010.

(5) [REDACTED] requested an extension on the verification checklist and the worker gave [REDACTED] an additional ten days with a new due date of February 15, 2010.

(6) On February 15, 2010, [REDACTED] requested another extension with a new due date of February 25, 2010.

(7) On February 25, 2010, [REDACTED] requested another extension of time. The extension was denied.

(8) On February 25, 2010, the worker had not received any asset verification from neither [REDACTED] the claimant's Power of Attorney, the bank nor the claimant so the department caseworker sent notice of case denial to the claimant's address and also faxed a copy of the denial to [REDACTED]

(9) On February 25, 2010, [REDACTED] filed the request for a hearing to contest the department's negative action.

(10) Claimant's application was sent to the Medical Review Team and the Medical Review Team did determine that claimant did meet the disability criteria for Medical Assistance and retroactive Medical Assistance benefits, but the other eligibility requirements were never established.

(11) Claimant was deceased 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) and the Program Reference Manual (PRM).

In the instant case, [REDACTED] was an authorized 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 [REDACTED]

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. BAM, 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. BAM, 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 PEM 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 within their ability to obtain verifications. DHS staff must assist when necessary. See BAM 130 and BEM 702. 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. PE M 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 Checklist, 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, incapability 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.

In the instant case, BAM, Item 130, p. 5, indicates the department is to allow the client 10 calendar days to provide verification that has been requested. If the client cannot provide the verification despite a reasonable effort, the department is to extend the time limit up to three times. In the instant case, the department caseworker acted appropriately and extended the period at least three times. Asset verification was not provided from [REDACTED] the Power of Attorney, or the bank. Therefore, the department appropriately denied 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.

A request for a hearing must be made in writing and signed by one of the persons listed above. The request must bear a signature. Faxes or photocopies of signatures are acceptable. A hearing request with a client's signature may name an authorized hearing representative (AHR) who is authorized to stand in for or represent the client at the rest of the hearing process. An

authorized hearing representative 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's 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 verifications sources:

- . A probate court order or court- issued letters of authority naming the person as guardian or conservator;
- . probate court documentation verifying the person has applied for guardianship or conservatorship;
- . authorization signed by the client 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 and 3).

Under Michigan law, all rights and authority granted by a Power of Attorney end at the death of the principal.

- . The Michigan Probate Court retains sole and exclusive jurisdiction over decedent estates. MCL 700.1302.
- . A patient advocate designation ends with the death of a principal. MCL 700.5510.
- . A Power of Attorney designation ends with knowledge of death of the principal. MCL 700.5504.

After death, the principal no longer exists as a separate legal entity: consequently, an estate must be created to handle the 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 or temporary personal representative to act on behalf of that estate, which includes pursuing potential gain from the Medicaid (MA) program, pursuant to

an action pending at the time of the principal's death. Matter of estate of *Breas Bois*, 140 Mich App; 364 NW2d 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, the decedent's son, authorized representative, authorized hearing representative or former 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 a substantive issue of disability under the above circumstances because there is no longer standing to bring the issue before the administrative tribunal when the claimant dies. Death does 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 claimant did meet the disability criteria for Medical Assistance and retroactive Medical Assistance benefits. This case was a verification issue in which claimant's authorized representative clearly had ample time in which to provide verification information. Neither claimant's son, claimant, nor the authorized representative or Power of Attorney provided verification of asset information and therefore, it could not be determined that claimant met all other non-medical criteria for Medical Assistance or retroactive Medical Assistance 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 and retroactive Medical Assistance benefits 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 hearing representative who filed the hearing request and appeared on decedent’s behalf at the June 30, 2010 administrative hearing had authority from the probate court to proceed.

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 fact that claimant’s prior authorized hearing representative indicated on the record that they did not have knowledge of claimant’s [REDACTED] death is not controlling in this case. If [REDACTED] had been in contact with claimant or with claimant’s Power of Attorney or son from November 6, 2009 through the last extension date of February 15, 2010, [REDACTED] would have had actual knowledge that claimant was very ill and thereafter, deceased. [REDACTED] did not allege on the record that they had ever had any contact with claimant decedent, or claimant’s Power of Attorney and son.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Adm
Departm

Date Signed: July 16, 2010

Date Mailed: July 19, 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 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.

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