

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-40391
Issue No: 2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 31, 2010
Ottawa 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 August 31, 2010. Claimant's representative personally appeared and testified. Claimant is in a Nursing Home and has Dementia. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application based upon its determination that claimant failed to provide verification information in a timely manner?

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 30, 2009, claimant's representative filed an application on claimant's behalf for Medical Assistance benefits.
- (2) The department caseworker sent a verification checklist to claimant/claimant's representative on December 1, 2009, requesting all proof by December 11, 2009.

- (3) Some information was received but all the proofs were not received by December 11, 2009. On December 29, 2009, the department caseworker denied claimant's application for failure to provide verification information.
- (4) No request for a hearing on that application was made.
- (5) On February 23, 2010, the claimant filed an application for Medical Assistance.
- (6) On February 23, 2010, claimant filed a second application for Medical Assistance benefits.
- (7) On February 24, 2010, the department caseworker sent claimant a verification checklist with a request for verification to be submitted by March 8, 2010.
- (8) Complete verification information was not received.
- (9) On March 10, 2010, the department case worker sent claimant notice that her application was denied for failure to provide complete verification information.
- (10) On March 23, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (11) This Administrative Law Judge addressed both applications because the first denial was made December 29, 2009, and March 23, 2009, is within the 90 day request for a hearing period.

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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 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, 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, claimant did admit on the record that she did receive the request for verification and she provided most of the verification but did not really understand the request made by the department and wasn't sure what information she provided to the department. The department caseworker testified that the department requested information because claimant withdrew \$ [REDACTED] from her grandmother's account and

purchased a brand new vehicle in December 2009. The title was initially in claimant's name and claimant's representative name and a new title was issued May 13, 2010, in claimant's name solely. In addition, the homestead was in a trust and therefore, was not an excluded asset and on April 30, 2010, the homestead was removed from the trust and claimant was approved for Medical Assistance April 1, 2010, forward.

This Administrative Law Judge finds that claimant was given the opportunity to provide verification information. Claimant did not establish on the record that she requested an extension of time in which to provide the verification information. Therefore, this Administrative Law Judge finds 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 November 30, 2009 application and when it denied claimant's February 23, 2010, application based upon its determination that claimant failed to provide verification information.

Claimant's request is a compelling equitable argument. Claimant's representative testified that she is the granddaughter of claimant and never dealt with any of these problems before and she was confused and also in and out of the hospital and therefore, did not really understand what information she was supposed to provide. There has been no testimony that claimant's representative requested assistance from the department in providing the information or requested clarification on what information she needed to provide. There has been no evidence that claimant's representative requested an extension of time in which to provide the verification information.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

This Administrative Law Judge has no equity powers. Therefore, the department's decision must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by preponderance of the evidence

