

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,  
by ██████████  
Claimant

Reg. No: 2010-47617  
Issue No: 2006  
Case No: ██████████  
Load No: ██████████  
Hearing Date:  
September 14, 2010  
Otsego County DHS

ADMINISTRATIVE LAW JUDGE: ALJ Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, a 3-way telephone conference hearing was held. Claimant was represented by ██████████.

ISSUE

Did the DHS properly close Claimant's Long-term nursing home Medicaid on the grounds that Claimant failed to comply with the redetermination process?

FINDINGS OF FACT

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

- (1) At all relevant times prior to the negative action herein, Claimant was a recipient of ██████████.
- (2) Claimant's case was scheduled for review in April, 2009.

(3) On 4/17/2009 the DHS closed Claimant's MA on the grounds that Claimant failed to return the Redetermination form. Department Exhibit 1A. The Hearing Summary contains much information regarding actions which took place after the department denied.

(4) Claimant's representative, prior to the April closure of 2009, was [REDACTED]. The department failed to communicate or send notices to [REDACTED].

(5) After the negative action, the department sent notices to different individuals at different points in time-Claimant's daughter-in-law, [REDACTED], and Claimant. Follow-up was sometimes given with a different individual in the initial contact period.

(6) On the most recent application prior to the negative action herein, [REDACTED] was listed as a representative. The representative was not given a Verification Checklist or Notice of Closure.

(7) Subsequent to the closure the department issued a DHS 4574. Claimant's daughter-in-law at that point identified herself as a representative. The department failed to consistently communicate with the daughter-in-law representative, from the point in time it received the DHS 4574 on 5/13/09.

(8) A 4/5/2010 Hearing Request was received. The Hearing Request 90-day window was tolled due to the failure of the department to issue proper notice to the representative [REDACTED].

(9) Claimant's case closed and was reopened on 1/20/10. At issue herein is 5/1/2009 2/12/31, 2009 long term care Medicaid.

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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Policy is quite specific with regards to the role that a representative plays as to rights and responsibilities, verification and communication. Specifically, when an individual is listed as a representative, the department is required to communicate with that individual regarding verification(s) and redeterminations.

In this case, the department issued the initial contact in this case by sending a notice to Claimant at the nursing home. The department argued at the Administrative Hearing that Claimant was the only person to communicate with as there is no representative on the most recent application dated 2008. However, Claimant's POA's witness at the Administrative Hearing produced an 1171 signed 2008 with [REDACTED] down as the representative. At that point, the department discovered the 2008 application and confirmed and stipulated that [REDACTED] was in fact the representative.

Policy states:

Authorized representatives: All programs. An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf...The AR assumes all of the responsibilities of the client, see BAM 105. BAM 110, p7.

In this case, [REDACTED] was down as a representative. The department failed to communicate with their representative herein regarding verification for redetermination. While the department may also communicate with the claimant, the department is in fact required to communicate with the representative. Failure to do so will toll any untimely hearing request as it was never issued to the proper party.

This ALJ decides jurisdiction is proper as the representative was not notified. This ALJ also finds that the department failed to properly communicate with the authorized representative in this case with regards to verifications at redetermination. Thus, the department's actions are reversed.

It is noted that the department also argued at the Administrative Hearing that it communicated after the hearing with the daughter-in-law. In support of this argument, the department indicates that the daughter-in-law became the new representative pursuant to a new 4574 signed on April 13, 2009. The jurisdiction of an Administrative Law Judge is to review the department's actions at the time the department took the action. Thus, this is not specifically relevant. However, the facts that took place after the denial is an example as to why policy requires communication with the representative of record. The representative pointed out that even after she signed the 4574 and received the Verification Checklist, the department failed to further communicate with her regarding follow up and instead communicated with [REDACTED]. Thus, the AR was not given its rights on the Verification Checklist to have the due date extended when the verifications were incomplete as she was never notified by the department with regards to any problems as to the verification(s).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department's closure was incorrect.

Accordingly, the department's closure of Claimant's MA, pursuant to its 4/17/2009 notice effective 5/1/2009 was incorrect and is hereby reversed.

The department is ordered to give Claimant's current AR-Claimant's daughter-in-law, an opportunity to comply with any outstanding verification(s) for the time period at issue herein- 5/1/2009 to 12/31/2009. The department is ordered to follow its policy with regards to communications with an AR. The department is further ordered to follow its general verification policy and procedure with regards to the issuing a Verification Checklist and giving Claimant at least 3 extensions if necessary and/or requested pursuant to policy and procedure. The department shall issue written notices of its disposition of its new processing for redetermination for the months at issue. Should Claimant receive an adverse decision, from the department, Claimant shall retain the right to a hearing for 90 days from the date of the new notice.

/s/

\_\_\_\_\_  
Janice Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: September 29, 2010

Date Mailed: September 30, 2010

JS/sd

2010-47617/JS

cc:

