IN THE MATTER OF:

████████████

Reg. No.:   2010-54292
Issue No.:   2021
Case No.:   ████████
Load No.:   ████████
Hearing Date: November 22, 2010
DHS County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant ██████████' request for a hearing. After due notice, a telephone hearing was held on November 22, 2010. Claimant did not appear, and ██████████, Claimant's legal guardian, appeared and testified on his behalf. ████████████████████████████████████, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS properly denied Medical Assistance (MA or Medicaid) benefits to Claimant?

FINDINGS OF FACT

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

1.   On March 11, 2010, Claimant's children, ████████████████████████████, were appointed guardians of their father, ██████████. They were not appointed as conservators of his property.

2.   On March 26, 2010, Claimant applied for MA benefits with DHS.

3.   After March 26, 2010, DHS determined that Claimant received Social Security Disability (RSDI) benefits and that these benefits were deposited directly into an active checking account owned by Claimant.

4.　　On March 29, 2010, DHS sent Claimant a Verification Checklist, DHS Form 3503, requesting information about the checking account.

5.　　The Verification Checklist set a deadline of April 8, 2010, for submission of the information.

6.　　On or about March 30, 2010, Claimant's guardian, ██████████, spoke to DHS and told them he was having trouble getting bank information because the bank required documentation of ██████████' right to obtain Claimant's bank account information.

7.　　DHS told ██████████ that if he could not get the documentation by April 8, 2010, Claimant would have to reapply.

8.　　On May 7, 2010, DHS denied Claimant's MA application for two reasons: "Group is not eligible because no group member is an eligible child," and, "You failed to verify or allow the department to verify information necessary to determine eligibility for this program."

9.　　On June 9, 2010, Claimant filed a notice of hearing request with DHS.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. DHS administers the MA program pursuant to MCL 400.10, *et seq.* and MCL 400.105. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

The manuals are DHS' officially created policies and procedures. The DHS manuals are the legal authority which DHS must follow. It is to the manuals that I now look in order to see what policy applies in Claimant's case. After setting forth what the applicable policy is, I will examine whether it was in fact followed in this case.

DHS cited two manual sections in support of its action, BAM 130, "Verification and Collateral Contacts," and BEM 400, "Assets." I agree that BAM 130 and BEM 400 are the appropriate Items to apply. I will first look at these two Items to see if DHS acted properly in this case.

BAM 130, "Verification and Collateral Contacts," sets forth the following policy to be applied in all cases:

> If the individual indicates the existence of a disability that impairs their ability to gather verifications and information necessary to establish eligibility for benefits, *offer to assist the individual* in the gathering of such information. BAM 130, p. 1 (italics added for emphasis).

I find that DHS erred when it failed to offer assistance to Claimant when Claimant's guardian called DHS on or about March 30 and explained the problem he was having getting verification from the bank where Claimant's checking account was held. I find and conclude that, as BAM 130 was not observed, DHS committed error in this case.

DHS committed a second error also. BAM 130 provides the following procedure for extending the time for submission of verification:

> **Timeliness of Verifications**
>
> **MA and AMP**
>
> Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification request….If the client cannot provide the verification despite a reasonable effort, *extend the time limit up to three times*. BAM 130, p. 5 (italics added for emphasis).

In light of this established procedure, I find and conclude that DHS erred in not allowing Claimant at least three extensions of time in which to provide verification of his bank account.

I also find a third DHS error in regard to BAM 130 in that DHS failed to provide Claimant with a collateral verification form, DHS Form 20, Verification of Resources. This is a form to be used with financial institutions when documentation is not otherwise available. DHS is instructed to use this form in BAM 130, but it failed to do so. *Id.,* p. 2.

Having reviewed DHS' first cited authority for their actions in this case, I now turn to the second Item DHS cited, which is BEM 400, concerning the customer's assets. I have reviewed BEM 400, which is forty-one pages long, in its entirety. This manual section defines the various assets a customer may have and sets forth how to treat them for purposes of determining whether a customer has countable assets. BEM 400 also states that verification of a checking account can be accomplished in two ways, by monthly bank statements *or by telephone contact with the financial institution.* BEM 400, p. 35.

Based on BEM 400, p. 35, I find and conclude that DHS committed a fourth error in this case in that DHS failed to make telephone contact with Claimant's bank in order to obtain information about his checking account. DHS erred by failing to take this step

made available in BEM 400, and also by so doing, DHS failed to protect its client's rights. BAM 105, "Rights and Responsibilities," p. 3.

In conclusion, I find and determine that DHS committed reversible error in this case in failing to follow four of its own policies and procedures. DHS is REVERSED. DHS is ORDERED to reopen Claimant's MA application, allow Claimant to submit all necessary verifications according Claimant all appropriate extensions of time, and process Claimant's application in accordance with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides and determines that DHS' action in this case is REVERSED. IT IS ORDERED that DHS shall reopen Claimant's MA application, permit Claimant to submit all necessary verifications with all appropriate extensions of time, and process Claimant's MA application in accordance with all DHS policies and procedures.

_____
Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 29, 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.

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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.

JL/pf

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