

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 54340
Issue No: 2000
Case No: [REDACTED]
Hearing Date:
January 10, 2011
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 received by the Department on July 2, 2009. After due notice, a telephone hearing was conducted from Detroit, Michigan on January 10, 2011. The Claimant appeared and testified. The Claimant's spouse, [REDACTED] also appeared on behalf of the Claimant. The Claimant's authorized representative [REDACTED] [REDACTED] also appeared and testified. The Department's representatives Lutisha Moxley, Assistant Payments Supervisor, and Debra Rosen (Thompson) FIS, appeared and testified on behalf of the Department.

ISSUE

Whether the Claimant's request for hearing regarding the denial of her application for Medical Assistance – Disability was timely.

FINDINGS OF FACT

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

1. In August 2008, the Claimant was hospitalized. After her hospitalization, the Claimant filed an application for medical assistance on August 12, 2008. Several other identical applications were received by the Department. None of the applications sought medical disability benefits. The applications were signed only by the claimant.
2. The August 2008 application(s) were denied on October 8, 2008, as the Claimant was not eligible for the Adult Medical Program (AMP).
3. The Claimant next applied for MA disability by an application signed by the Claimant November 5, 2008. The application was received by the Department on November 5, 2008. The Claimant's application sought Medical Assistance based upon disability. Exhibit 1
4. The November 5, 2008 application was signed only by the Claimant without indication that she was represented by an authorized representative. No retroactive application was filed with the application. Exhibit 1
5. A verification check list and retroactive application were sent out by the Department on November 26, 2008, with a due date of December 9, 2008. Exhibit 2
6. At the time the Department mailed out the verification check list and when it denied the Claimant's application, the Department had not received an authorization to represent the Claimant by the authorized representative and had not received an authorization to release information.

7. The Department did not have any authorization to represent or authorization to release filed by an authorized representative in its files for the Claimant's November 5, 2008 application.
8. The Claimant's application for MA disability of November 5, 2008 was denied on December 12, 2008 by Application Eligibility Notice for failure by the Claimant to respond to the verification checklist. Exhibit 3.
9. The Claimant did not respond to the verification checklist, which she acknowledged receiving. The Claimant also received the notice of denial of her November 5, 2008 application, and acknowledged receiving the Application Eligibility Notice
10. The Department did not receive a request for release of information or an authorization to represent from the Claimant's authorized representative with regards to the November 5, 2008 application.
11. No proof was submitted by the Claimant's authorized representative at the hearing regarding the proof of mailing of the authorization to represent and release documents on October 23, 2008. Exhibit 4.
12. The employee of the authorized representative who was assigned to the Claimant, who worked on the Claimant's file, and who had actual contact with the Claimant, did not testify. This employee is still employed by the authorized representative.
13. The Claimant's current authorized representative claimed to have sent an authorization to represent and a medical release authorization to the Department on October 23, 2008, (prior to the filing of the application),

and on December 29, 2008, (after the Claimant's application had been denied).

14. The Claimant received the denial of her November 5, 2008 application, which was dated December 12, 2008. The request for a hearing was required to be filed within 90 days of the denial date or by on or about March 12, 2009, and was not received by the Department until July 2, 2009.
15. The hearing request filed by the authorized representative on June 26, 2009 which was received by the Department on July 2, 2009 was untimely. Exhibit 5.
16. On June 26, 2009, the Claimant's authorized representative, [REDACTED], requested a hearing on behalf of the Claimant which was received by the Department on July 2, 2009, protesting the fact that it never received a verification checklist or a notice of the application denial.

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, formally 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 Bridges Program Reference Manual ("PRM").

In this case, after receiving an application signed by the Claimant, the Department mailed out a request for verification and a retroactive medical application to the Claimant. The Department sent an Application Eligibility Notice to the Claimant dated December 12, 2008, denying the Claimant's application. The Claimant received both of these documents. The Application filed by the Claimant did not indicate that the Claimant had an authorized representative. Under these facts the Department correctly communicated to the Claimant only, as it had no notice that the Claimant had an authorized representative and therefore had no duty to send any documents to anyone but the Claimant.

While the Claimant's application of November 5, 2008 was pending, the Department had no knowledge or notice that the Claimant was represented by an authorized representative. The claimant was the sole signatory to the application for Medical assistance and disability. The Department did not send the verification checklist or the denial of the application to an authorized representative because the Department never received an authorization to represent or an authorization to release medical information during the period while the application was pending, November 5, 2008 through December 12, 2008.

Given the fact that the Department had not received an authorization to represent or authorization to release information which would put it on notice that the Claimant was represented by an authorized representative it had no reason or obligation to send documents to anyone but the Claimant. Bam 110 requires that any authorized representative must be designated in writing by the client. Id page 8. Thus, the Department had no obligation to send the verification checklist or notice of the denial of the application to anyone but the Claimant. Any emails sent by the Claimant's

authorized representative at any time regarding the Claimant's application did not obligate the Department to respond to such an inquiry by anyone purporting to be an authorized representative, without an authorization to represent in its files. The Department consistently testified that it did not have any notice of representation of the Claimant by any authorized representative.

The authorized representative asserts that it filed an authorization to represent and authorization to release medical information on October 23, 2008 and December 29, 2008. Neither of these documents, even assuming they were received by the Department, was filed during a time when the Department had a pending application for the claimant. This being the case the Department had no right or obligation to respond to any inquiries made by the authorized representative.

The authorized representative for its part testified that its records indicated that the authorizations were sent by snail mail (regular mail) and that two fax transmissions failed. No proofs were submitted documenting the mailing or proof of fax failure to corroborate the testimony of what it alleged occurred. Once the application was denied the Department had no further responsibility to respond to any requests of the authorized representative.

The hearing request filed by the Claimant's current authorized representative on behalf of the Claimant was untimely. The November 5, 2008 application was denied on December 12, 2008. The Claimant had 90 days from December 12, 2008, the date of the Application Eligibility Notice denying the application to request a hearing. The request for a hearing had to be made within 90 days, or on or about March 12, 2009. The request for hearing that was received on July 2, 2009 by the Department was late,

and is therefore untimely. In accordance with BAM 600 the hearing request was untimely and the hearing request must be dismissed.


BAM 600 provides:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. Id page 4.

Based upon these facts and circumstances and the record as a whole it is found that the hearing request was untimely and must be dismissed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that the July 2, 2009 hearing request was untimely and must be DISMISSED.


Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 03/03/11

Date Mailed: 03/08/11

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.

LMF/dj

cc:

