

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-55652
Issue No: 2011
Case No: [REDACTED]
Hearing Date:
June 8, 2011
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 8, 2010. Claimant was represented at the hearing by [REDACTED] who appeared as an authorized hearings representative and as a witness. [REDACTED] also appeared and testified. Claimant deceased [REDACTED]

ISSUES

- (1) Whether claimant's daughter [REDACTED] had the legal authority to act as an authorized hearings representative in this case?
- (2) Did the Department of Human Services (the department) properly determine that claimant's application date was March 1, 2010?

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 February 20, 2010, claimant entered the nursing home in long term care.
- (2) On March 1, 2010, an application was filed on behalf of claimant by her daughter [REDACTED] for Medical Assistance and was date stamped at the St. Clair County Department of Human Services district office.

- (3) A divestment period was calculated using the March 1, 2010, application date which indicated a divestment period from March 1, 2010 through March 29, 2010.
- (4) On April 1, 2010, the department caseworker sent claimant notice which stated that she was granted ongoing Medicaid from March 1, 2010, but her divestment penalty, because of the gifting, started March 1, 2010 for 28 days. That means those 28 days will be private pay and then your LTC coverage starts and so you would only pay the nursing home the patient pay amount which starts March 29, 2010. (Department Exhibit, pages 9-10)
- (5) On [REDACTED] claimant passed away.
- (6) On June 30, 2010, [REDACTED] filed a request for a hearing on claimant's behalf, to contest the divestment period.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600

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).

ISSUE #1

Whether claimant's daughter (and [REDACTED]) had the legal authority to act as an authorized hearings representative in this case?

In the instant case, claimant's representative alleges that on February 25, 2010, claimant's daughter, signed an Authorization of Representation authorizing [REDACTED] to represent claimant in all matters pertaining to her claim for Medicaid benefits from the St. Clair County Department of Human Services, including administrative hearings, and to release any information to him and to discuss any of these matters with them. There is no evidence in the record that Claimant's daughter possessed a valid Durable Power of Attorney, which authorized her to make decisions on claimant's behalf during

her lifetime. Even assuming that such a document exists, the Power of Attorney would have been revoked on the date of claimant's death, which was April 10, 2010. Thus, for purposes of this hearing, claimant's daughter is not an authorized hearing representative for claimant. Claimant's daughter was not an authorized representative on the date that the request for a hearing was filed and she can no longer become an authorized representative for her mother, in the absence of a probate court order. It follows that since claimant's daughter did not have legal standing to represent her mother after April 10, 2010, she also did not retain the legal ability to appoint [REDACTED] to represent her mother's estate or become an authorized hearing's representative. Claimant's request for a hearing is hereby DISMISSED because claimant's daughter did not have authorization to act on behalf of the deceased. An authorization to represent a person may be revoked at any time by the person who gave the authorization. When the person who gave the authorization dies, the authorization ends at the time of the death. A dead person can neither give nor revoke, nor affirm authorization. There is no such thing as authorization to act for a dead person. After death, the person does not exist as a legal entity so no one can represent the person. This is Michigan law, MCL 700.497 and MCL 700.5504.

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.

An estate of a dead person may be created to handle the remaining business or financial concerns that were outstanding at the time of the person's death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a personal representative of the estate. For the Medicaid program only, a widow or widower may act as a representative on the Medicaid plan without probate court

authorization. Claimant's daughter could not provide a probate court order or court-issued letter of authority naming her or another person as a personal representative of the estate. Therefore, an administrative hearing must be DISMISSED.

Department policy dictates that an authorized representative is a person who applies for assistance on behalf of a client or otherwise acts on his or her behalf. BAM, Item 110, p. 7. An authorized representative is not the same as an authorized hearings representative. The authorized representative assumes all the responsibilities of a client. Application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, specified relative or any other person provided the person is at least age 18 or married. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or specified relative the person must have a signed authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian. The application form must be signed by the client or the individual acting as his authorized representative. (BAM Item, page 9)

An authorized representative must be:

- An adult child or stepchild.
- A specified relative, see [BEM 135](#).
- Designated in writing by the client.
- Court appointed.
- A representative of an institution (such as jail or prison)
- where the client is in custody. (BEM Item 110)

An authorization to represent is a form of a power of attorney. When a person who gave the authorization dies, the power of attorney ends. After death, the person does not exist as a legal entity, so no one can represent the person. However, if a person dies while the application is pending, the application should be processed. An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a representative of the estate. A court, agency or guardian **legally** responsible for a client must be identified as an authorized representative (AR) by Type on Bridges. (BEM Item 110, page 9)

In this case, claimant's daughter has not established that she was authorized to act on her mother's behalf when the request for a hearing was filed on June 30, 2010. Even if she was an authorized representative at the time of the filing of the application, the authorization ended with the claimant's death on April 10, 2010. Thus, claimant's daughter could not authorize anyone else to represent claimant's estate. The application was processed in accordance with department policy.

An authorized hearings representative is the person who stands in for or represents the client in the hearings process and has the legal right to do so. This right comes from one of the following sources:

- . written authorization, signed by the client, giving the person authority to act for the client in the hearings process.
- . court appointment as a guardian or conservator
- . the representative status as a legal parent of a minor child
- . the representative status of an attorney at law for the client, and

For MA only:

- . the representative status as the client's spouse or the deceased client's widow or widower, only when no one else has authority to represent the client's interests in the hearings process. An authorized hearing representative has no right to a hearing, but rather exercises the client's right. Someone who assists, but does not stand in for or represent the client in the hearings process need not be an authorized hearing representative. Stands in for means the authorized hearing representative does whatever the client could do if the client were not represented. (BPG Glossary, p. 4)

In the instant case, claimant's daughter was not an authorized representative of claimant after April 10, 2010, nor an authorized hearing representative of claimant. Once the claimant deceased on April 10, 2010, claimant's daughter could not appoint anyone to represent the estate's interests without Probate Court authorization. Therefore, based upon the fact that the claimant is deceased and was deceased as of April 10, 2010, the hearing request must be dismissed.

An authorization to represent is a form of a Power of Attorney. When a person who gave the authorization dies, the Power of Attorney ends. After death, the person does not exist as a legal entity so no one can represent the person. However, if a person dies while the application is pending, the application should be processed. An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. Only a probate court can create a decedent's estate. The court must appoint someone to act as a representative of the estate. A court, agency or guardian

legally responsible for a client must be identified as an authorized representative. BAM, Item 110, pp. 9-10.

According to his testimony, [REDACTED] became the personal representative for claimant's estate on May 25, 2011. Thus, because claimant's daughter did not have legal authorization to represent claimant's estate, [REDACTED] did not have authorization to represent claimant's estate on June 30, 2010, when the request for a hearing was filed. [REDACTED] 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.

ISSUE #2

Did the Department of Human Services (the department) properly determine that claimant's application date was March 1, 2010?

In the alternative, assuming that [REDACTED] had established that he was a proper Authorized Hearings Representative, [REDACTED] argues that he dropped claimant's application for Medical Assistance into the department drop box on [REDACTED] a Thursday. He did not go inside the department to sign the log kept at the front desk to log in documents brought to the department, nor did he request a date stamp for his filing. [REDACTED] also argues that the Department did not date stamp the document until March 1, 2010, a Monday, which meant that the department did not consider the month of February when processing the application. In addition, [REDACTED] also argues that he filed a second, unrelated application, by dropping it into the exact same drop box on [REDACTED] and received an application date stamp as [REDACTED]. All other documents contained in the file appear, such as the request for a hearing appear to have been date stamped appropriately.

Pertinent Department policy states:

The date of application is the date the local office receives the required minimum information on an application or the filing form. If the application or filing form is faxed, the transmission date of the fax is the date of application. Record the date of application on the application or filing form. The date of application does **not** change for FIP, SDA, MA, CDC or AMP when the application is transferred to another local office. (BAM, Item 110, page 4) Register a signed application or filing form, with the minimum information, within **one workday** for all requested programs. (BAM Item 110, page 16)

In the instant case, the date stamp on the application is March 1, 2010. Although, Attorney J.A. testified under oath that he placed the application in the drop box on February 25, 2010, there is no evidence to support the contention beyond the bald testimony. Attorney J. A. admitted that he did not sign the log inside the district office which specifically is placed there for people to register their application dates or presence in the office. He also did not request a date stamped copy of the application for his records. Moreover, it does not make sense to this Administrative Law Judge that if Attorney J. A. put a second, unrelated, application in the same drop box on February 26, 2010 and got it date stamped February 26, 2010, that an application dropped into

the same drop box on [REDACTED] would not be date stamped until [REDACTED]. 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 determined that claimant was not eligible to receive Medical Assistance benefits beginning [REDACTED] the date the application was dated stamped and registered.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that claimant's daughter is neither an authorized representative nor an authorized hearing representative for purposes of this case.

Accordingly, the hearing request is hereby DISMISSED.

Landis

/s/

Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 15, 2011

Date Mailed: June 16, 2011

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.

LYL

cc:

[REDACTED]