IN THE MATTER OF:

          Claimant

Reg. No: 2010-7106
Issue No: 2006
Case No:
Load No:
Hearing Date:
June 9, 2010
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 9, 2010. Claimant personally appeared and testified. She was assisted by ▮▮▮▮▮▮▮▮▮▮, a patient advocate from ▮▮▮▮▮▮▮▮▮▮

ISSUE

Did the department properly deny claimant's April 28, 2008 MA/retro-MA application?

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 time relevant, claimant appointed ▮▮▮▮▮▮▮▮▮▮. to act as her authorized representative in all phases of application processing and appeal.

(2)   On April 28, 2008, claimant's authorized representative applied for disability-based MA/retro-MA on claimant's behalf (Department Exhibit #1, p. 19).

(3)   When that application was denied, claimant's authorized representative filed a timely hearing request.

(4)   Claimant's hearing was held on November 12, 2008.

(5)   Claimant's hearing appeal remained pending until May 5, 2009, when a favorable hearing decision was issued reversing the initial local office denial based on updated medical evidence reviewed for the first time after the hearing (Department Exhibit #1, pgs. 16-19).

(6)   This decision concludes in relevant part:

> … it is Ordered that claimant's disputed MA/retro-MA application shall be processed with benefits awarded if claimant meets all of the other financial and non-financial requirements necessary to receive them… (Department Exhibit #1, pg. 17).

(7)   The department's policy requires MA/retro-MA applicants to pursue federally-funded RSDI benefits in order to qualify for MA/retro-MA, and also, it requires these applicants to provide verification of their efforts unless the following exception applies:

> A client's statement at application, redetermination or change that he has applied for the benefit or that he is not eligible is to be accepted **unless** the statement is unclear, inconsistent or in conflict with other information. BEM Item 270, pg. 5.

(8)   Before claimant's favorable hearing decision was issued the department prematurely and erroneously purports they sent requests to claimant and to her authorized representative for verification of a pending RSDI application (Department Exhibit #1, pgs. 1 and 2).

(9)   After claimant's favorable hearing decision was issued, specifically on May 14, 2008, the department purportedly sent duplicate requests to claimant and to her authorized representative which gave them until May 28, 2008, to provide this verification.

(10)   However, eight days before the May 28, 2008 deadline expired, specifically, on May 20, 2008, the department mailed denial notices to claimant and to her authorized

representative based on a purported failure to cooperate in providing the requested verification (Department Exhibit #1, pgs. 5 and 6).

(11)   When claimant's authorized representative received this denial notice, he filed another timely hearing request dated August 11, 2009, but claimant's hearing was not held until June 9, 2010 (Department Exhibit #1, pg. 15).

(12)   The department's sole witness at hearing was not the worker on this case, nor did she have any involvement or interaction with claimant or claimant's authorized representative throughout the disputed MA/retro-MA application denial process.

(13)   Claimant's authorized representative testified credibly at hearing about his office's routine business practices used in monitoring their active client files.

(14)   Claimant's authorized representative testified credibly each piece of received mail is logged in at reception then scanned into a centralized computer system as having been received; additionally, a handwritten note is generated and put in each client's file to again document what was received and the date on which it was received.

(15)   Claimant's authorized representative testified credibly he thoroughly reviewed the office's business records in claimant's case and saw no evidence that either the (first) prematurely mailed verification checklist or the (second) properly mailed verification checklist was ever received (See also Finding of Fact #8 and #9 above).

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).

The applicable departmental policy states:

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. PAM, Item 105, p. 8.

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. PAM, Item 105, p. 1.

At application and redetermination:

- Thoroughly review all eligibility factors in the case.

Applications and redeterminations must be completed within the standards of promptness. See PAM 115, 210. PAM, Item 105, p. 11.

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. PEM 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. PAM, Item 130, p. 1.

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. PAM, 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. PAM, 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. PAM, Item 130, p. 4.

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 (e.g., to obtain FAP benefits for the group.) An AR is not

> the same as an Authorized Hearing Representative (AHR) PAM,
> Item 110, p. 6.
>
> The AR assumes all the responsibilities of a client. See PAM 105.
> PEM, Item 110, p. 7.

The credible documentary evidence and testimony of record in this case is clear. The only proper verification checklist the department purportedly sent was mailed on May 14, 2008. The stated deadline for return of the requested verification was May 28, 2008. However, more than a week before this deadline expired, specifically on May 20, 2008, the department denied the application by written notice, thus completely precluding claimant's authorized representative from ever being able to meet the stated deadline. As such, the department's action was procedurally incorrect at the threshold level and it simply cannot be upheld.

Additionally, claimant's authorized representative offered credible testimony regarding the business practices in place in his office to ensure these deadlines are met, and also, he testified credibly that a review of claimant's file did not show that they ever received either of the department's verification requests. Because the department's sole witness had no personal knowledge of this case and took no personal action during the relevant processing period, this Administrative Law Judge finds claimant's authorized representative's testimony must stand uncontroverted. As such, the department's application denial action must be reversed on both procedural and substantive grounds.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously denied claimant's April 28, 2008 MA/retro-MA application on the stated grounds.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and reprocessing consistent with departmental policy.

SO ORDERED.

_____/s/_____

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _July 21, 2010_____

Date Mailed: _July 28, 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

MBM/cv

cc: