

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-8808

Issue No: 2014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 27, 2010

Newaygo 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 April 27, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) benefits based upon the fact that he is not a relative of the minor child?

FINDINGS OF FACT

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

- (1) Claimant is the legal guardian of the minor child.
- (2) Claimant filed an application for Medical Assistance for himself and the child.

(3) A Medical Assistance case was opened for the child but it was determined that claimant is not a relative of the child.

(4) The department determined that claimant does not qualify for low income family Medical Assistance benefits due to excess income.

(5) The department also determined that claimant did not qualify for Medical Assistance under the Group 2 caretaker relative classification because specific relationships defined for qualifications do not include legal guardianship.

(6) On October 16, 2009, the department caseworker sent claimant notice that his application for Medical Assistance benefits was denied under the low income family category because he had excess income and denied under the group 2 category because legal guardianship is not a specific relationship defined for qualification.

(7) On October 9, 2009, claimant filed a request for a hearing to contest the department's negative action.

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).

In the instant case, BEM, Item 110, indicates that a child must live with a specified relative in order to qualify for low income family Medical Assistance (LIF) the child must be present in the home except for temporary absences. A specified relative is any of the following:

- Parent
- Aunt and/or uncle
- Niece and/or nephew
- Any of the above relationships prefixed by grand, great or great great
- Step parent
- Sister or brother
- Step sister or step brother
- First cousin
- First cousin once removed (i.e., a first cousins child).
- The spouse of any person above even after the marriage is ended by death or divorce.
- Any of the above includes relationships established by adoption.
- The parent of the child's putitive parent (alleged) father
- A legal guardian of the child
- An unrelated person whose at least age 21 and who has petitioned for legal guardianship of the child is pending.

In the instant case, the department caseworker determined that claimant was ineligible to receive low income family Medical Assistance benefits because he had excess income.

However, the department did not provide a budget which indicates how much income claimant had or why he was determined to be ineligible for Low Income Family Medical Assistance benefits. Therefore, the department's decision must be reversed based upon the fact that there is insufficient evidence to determine that claimant had excess income for purposes of Low Income Family Medical Assistance benefits.

Medicaid provides Medical Assistance for eligible clients under 2 general classifications: Group 1 and Group 2 MA. Group 2 caretaker relatives include a specified relative. A specified relative is any of the following:

- Parent
- Aunt and/or uncle
- Niece and/or nephew
- Any of the above relationships prefixed by grand, great or great-great
- Step parent
- Sister or brother
- Step sister or step brother
- First cousin
- First cousin once removed (i.e., a first cousins child).
- The spouse of any person above even after the marriage is ended by death or divorce.
- Any of the above includes relationships established by adoption. (BEM, Item 135)

BEM, Item 135, Group 2 caretaker relative does not indicate that a specified relative is the parent of the child's putative (alleged) father or a legal guardian of the child or unrelated person who is at least age 21 and who has petitioned for legal guardianship of the child pending. Therefore, based upon Group 2 caretaker relative policy BEM, item 135, claimant, as for legal guardianship of the child is not considered to be a specified relative.

Claimant's allegation that he should be considered a specified relative for both categories of Medicaid is a compelling equitable argument to be excused from the department policy requirements. Claimant has been the child's legal guardian for approximately 4 years.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Unfortunately, the Administrative Law Judge has no equity powers. Therefore, claimant cannot be considered a Group 2 caretaker relative under BEM, item 135, because he is the legal guardian of the child and a legal guardian is not listed in the specified relative category.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that 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 could not be considered for Group 2 caretaker relative Medical Assistance benefits based upon the fact that he does not meet the standard for a caretaker relative under BEM, item 135.

Accordingly, the department's decision is partially AFFIRMED. However, the department did not establish 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 had excess income for purposes of the Low Income Family Medical Assistance

benefits. There was no budget contained in the file and there was not evidence as to how much income claimant had at the time of application.

Accordingly, the department is partially REVERSED. The department is ORDERED to re-instate claimant's Low Income Family Medical Assistance application and to run a budget based upon claimant's income at the time of application to determine whether or not claimant is eligible to receive Low Income Family Medical Assistance benefits. The department shall notify claimant in writing of his eligibility or lack there of. If claimant is otherwise eligible, the department shall open a Medical Assistance case for claimant.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 19, 2010

Date Mailed: May 20, 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.

LYL/alc

cc:

