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: 2010-8880
Issue No: 2026
Case No: [redacted]
Load No:
Hearing Date:
January 19, 2010
Ottawa 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 January 19, 2010. Claimant did not appear; however, she was represented by her legal guardian.

ISSUE

Did the department properly deny Medicaid (MA) deductible coverage to claimant in April, May and June, 2009?

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 an adult ([redacted]), developed mentally disabled Down Syndrome survivor with severe physical and mental difficulties which have necessitated residential foster care placement for over 15 years.

(2) Claimant's local Department of Human Services (DHS) office knew or should have known about the severity of her functional limitations, as well as about her need for extensive personal care services (as provided by the [redacted] homes), because claimant had an open, ongoing DHS case for several years with a [redacted] month MA deductible starting April 1, 2009.

(3) Claimant's legal guardian moved claimant from her former [redacted] home to a new home in October 2008, and claimant's [redacted] liaison promptly notified the local DHS office of this move.

(4) Six months later the local office requested verification of claimant's rental expense at the new facility.

(5) On April 1, 2009, claimant's new [redacted] home faxed a completed shelter verification form to the local office which inadvertently failed to specify that monthly portion of the total amount listed ([redacted]) which was used to fund certain specific, MA deductible personal care services the [redacted] provided to claimant (and continues to provide) after she moved there (Department Exhibit #1, pg 3).

(6) The local office did not contact claimant's new [redacted] home to reconcile this discrepancy despite two, contemporaneous telephone messages made by claimant's [redacted] home to the local office to insure their faxed form had, in fact, timely arrived.

(7) However, the local office did contact claimant's [redacted] liaison by phone on May 5, 2009, to inform her claimant would be eligible for MA deductible coverage retroactive to March 1, 2009, with no gap in service, according to the liaison's email records.

(8) But that never happened because the department erroneously mailed a Notice of Case Action (DHS-1605) to the local [redacted] home where claimant resides instead of properly mailing this form to her documented legal guardian.

(9) This notice states claimant's MA deductible case would start on July 1, 2009, but not earlier, because the inconsistent information about distribution of claimant's total monthly [redacted] home payment [redacted]) between her ongoing personal care services expense and her ongoing monthly housing expense (rent) was not resolved until July 2, 2009 (Department Exhibit #1, #2 and #5).

(10) This delay resulted in claimant losing her MA deductible [redacted] home coverage between April 1, 2009 and June 30, 2009, because the department refused to apply her monthly personal care expense ([redacted] against her [redacted] monthly deductible.

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).

> **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.

At all times relevant, the hearing record establishes the local office knew claimant had a legal guardian who was in charge of all her business affairs. Consequently, their repeated failure

of sending paperwork necessary for claimant's ongoing MA deductible coverage to the AFC home instead of to her legal guardian constitutes procedural error at the threshold level.

Additionally, the department's verification policy specifically 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.
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> **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.
>
> **Obtaining Verification**
>
> **All Programs**
>
> Tell the client what verification is required, how to obtain it, and the due date (see "**Timeliness Standards**" in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.
>
> **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.

Discrepancies

All Programs

Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. PAM, Item 130, p. 5.

Under these circumstances, the local office had an affirmative duty to promptly contact claimant's legal guardian/authorized representative and provide him a fair opportunity to resolve the apparent discrepancy existing on its face, specifically, what portion of claimant's monthly [redacted] home payment was being used to fund her obviously-required personal care services. If this had been done correctly claimant's existing MA coverage lapse most likely would not have occurred. As such, the department's closure action was premature and it simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the deparmtent erroneously denied MA dedutible coverage to claimant in April, May and June 2009.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for retroactive reinstatement during the coverage gap, as long as claimant met all of the other financial and non-financial eligibility factors necessary to receive said coverage. **SO ORDERED.**

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

Date Signed: February 11, 2010

Date Mailed: February 11, 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/db

cc: [redacted]