

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: 2010-11235

Issue No: 2006

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2010

Monroe 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 10, 2010. Claimant and his wife personally appeared.

ISSUE

Did the department properly refrain from activating Medicaid (MA) deductible coverage on claimant's case in August 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) At all times relevant, claimant and his spouse had (and still have) an active MA deductible case in [REDACTED]

(2) On August 1, 2009, the department mailed to claimant's address-of-record a Verification Checklist (DHS-3503) requesting documentary proof of the amount of money

contained in claimant's checking account so a determination about whether or not he met the financial requirements necessary to qualify for MA in August could be made (Department Exhibit #1).

(3) This checklist specifically states the required proof must be returned to the department no later than August 11, 2009 (Department Exhibit #1).

(4) Additionally, the following warning is clearly printed on the checklist:

Important Information

You must get the proofs to me or call me by the due date above. If you do not, your benefits may be denied, decreased or cancelled (Department Exhibit #1).

(5) The department did not receive the requested proof by the stated deadline; consequently, MA deductible coverage for August 2009 was not activated.

(6) On September 8, 2009, nearly one month after the stated deadline expired, claimant and/or his spouse provided a checking account bank statement verifying their account balance to the department (Department Exhibit #2).

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:

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which

can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

You must consider the assets of each person in the asset group. See the program's asset group policy below. PEM, Item 400, p. 1.

An asset is countable if it meets the availability tests and is **not** excluded. PEM, Item 400, p. 1.

Value of Cash

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

The value of the types of assets described above is the amount of the:

- . Money/currency
- . Uncashed check, draft or warrant
- . Money in the account or on deposit
- . Money held by others

Exception: Reduce the value of a time deposit by the amount of any early withdrawal penalty, but **not** the amount of any taxes due. PEM, Item 400, p. 10.

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see PEM 405). PEM, Item 400, p. 4.

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. PAM, Item 105, p. 5.

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.

The evidence of record clearly establishes the department properly applied the above-referenced policy in claimant's case. Claimant had the responsibility to comply with the verification policy in this case. When neither he nor his spouse met the stated deadline for submission of the mandatory bank account proofs, the department had no alternative but to refrain from initiating MA coverage in the disputed month.

At hearing, claimant's spouse alleged they did not receive the Verification Checklist (DHS-3503) the department sent them. The local office's witness testified credibly this transmittal was never returned as undeliverable.

Michigan's case law is well-settled in this area. It provides that the proper mailing and addressing of a letter creates a presumption of receipt. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). While this presumption is rebuttable, neither claimant nor his spouse provided any documentary evidence or substantiating testimony to corroborate her version of non-receipt.

Furthermore, the rest of claimant's spouse's hearing testimony revolved around expressing their dissatisfaction with employee services provided at the local office level. This dissatisfaction includes allegations of failure to return phone calls, failure to properly process paperwork, and generally neglecting their needs. These types of personnel conflicts/complaints are completely outside the scope of authority delegated to administrative law judges in the administrative arena. Administrative adjudication simply is an exercise of executive power rather than judicial power and it restricts the granting of equitable remedies even if the evidence supports that conclusion, which is not the case in this dispute. *Michigan Mutual Liability Co v Baker*, 295 Mich 237; 294 NW 168 (1940).

However, the department's policy at BAM Item 105, p. 4, specifies that clients have the right to make general complaints about matters other than hearing policy issues. Written complaints can be sent to:

Michigan Department of Human Services
Office of Inquiry and Concerns
235 South Grand Avenue
PO Box 3007
Lansing, Michigan 48909

That office also responds to complaints via telephone: (517) 373-0707.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly refrained from activating MA deductible coverage on claimant's case in August 2009.

Accordingly, the department's action is **AFFIRMED**.

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

Date Signed: July 12, 2010

Date Mailed: July 14, 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

2010-11235/MBM

cc:

