

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201012342
Issue No.: 2012
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 26, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on August 26, 2010. On behalf of Claimant, Claimant's spouse, [REDACTED], appeared and testified; [REDACTED] and [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Manager, appeared and testified.

ISSUE

Whether the failure by DHS to timely process Claimant's request for Medical Assistance (MA) benefits entitles Claimant to a change in eligibility for a period when Claimant was not eligible for MA benefits.

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 applied for MA benefits on 2/26/09.
2. At the time of Claimant's application, Claimant owned various assets including: a checking account valued at \$1643.83, a savings account worth \$2,241.65, two prudential life insurance policies worth \$10,036.70 and \$1971.09, three retirement annuities valued at a combined \$21,119.52 and a life insurance policy valued at \$1,596.54.
3. On 6/30/09, DHS determined that Claimant had excess-assets for MA benefits and denied Claimant's application.

4. Claimant reapplied for MA benefits in 7/2009 and was approved after some of Claimant's assets were spent toward the cost of Claimant's funeral.
5. Claimant passed away on 7/22/09 but was approved for MA benefits for the month of 7/2009.
6. Claimant's spouse submitted a hearing request on 11/23/09 disputing the DHS denial for MA benefits from 3/2009 through 6/2009 specifically disputing the length of time that DHS took to process Claimant's 2/26/09 application.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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). At the time of Claimant's application, DHS policies were found in the Program Administrative Manual (PAM) and the Program Eligibility Manual (PEM).

The administrative hearing representative or, if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 at 1. In the present case, Claimant was physically incapable of requesting a hearing. Two hearing requests were submitted by members of Claimant's family. It took several weeks before the State Office of Administrative Hearings and Rules (SOAHR) denied the hearing requests. By the time it was learned that Claimant's spouse was an acceptable authorized hearing representative, more than 90 days had elapsed since DHS had mailed a Notice of Case Action.

The undersigned is not inclined to hold Claimant responsible for a tardy hearing request due to the sincere belief that Claimant's family had when they filed their timely but technically improper requests. Had SOAHR been able to respond sooner, Claimant's spouse would have filed a timely hearing request. It is found that Claimant's representative's hearing request was timely.

DHS has 45 days to process a MA application. BEM 115 at 11. In the present case, DHS took approximately 124 days to process Claimant's application. If DHS fails to process an application, it is appropriate to order that the application be processed. No such order is necessary in the present case as DHS processed Claimant's application.

Claimant's representative did not dispute that the 6/30/09 DHS decision denying Claimant MA benefits due to excess assets was correct. Claimant's representative stipulated that all of the assets listed in the MA benefits budget (Exhibit 1) accurately reflected Claimant's assets at the time of Claimant's 2/26/09 application. The only argument made by Claimant was that if Claimant's representative had known sooner that Claimant was asset-ineligible, then Claimant's representative could have disposed of the assets sooner and Claimant could have been entitled to MA benefits sooner following a new application for MA benefits. Assuming Claimant was otherwise eligible for MA benefits, Claimant could have received an additional two months of MA eligibility.

The issue of disposing of assets merely for the purposes of qualifying for MA benefits raises the issue of divestment. Divestment is a type of transfer of a resource or asset in an attempt to make a person asset-eligible for MA benefits. Divestment of assets typically results in a penalty of benefit eligibility. However, placing money in an irrevocable prepaid funeral contract is not divestment. PEM 405 at 8. In the present case, DHS approved Claimant for 7/2009 MA benefits after assets were disposed even though Claimant was considered asset-ineligible in the prior month. DHS did not consider the asset disposal to be divestment, presumably because of the funeral contract exception to divestment.

The remedy which Claimant seeks would require ordering a registration of MA benefits shortly after 45 days following the 2/26/09 MA benefit application. A registration date in 4/2009 for MA benefits would be appropriate if Claimant's argument is adopted.

Ordering a 4/2009 application registration for MA benefits requires some rewriting of history. The undersigned is somewhat sympathetic to Claimant on this issue. An application for benefits is a purely bureaucratic requirement. The undersigned sees little problem in ordering the registration of a non-existent application if the primary reason that the application was not filed was the fault of DHS. However, Claimant has a more problematic issue.

If Claimant's argument was adopted, it would have to be further ordered that DHS ignore Claimant's assets for the purposes of MA benefit eligibility. It is not disputed that Claimant was asset-ineligible for MA benefits in 4/2009-6/2009. Again, Claimant is asking for a change in history. Claimant's requested remedy is simply not a reasonable one in response to a DHS failure to timely process an application.

Standards of promptness, the amount of time given to DHS specialists to perform their duties, are utilized primarily to ensure that eligible clients receive benefit assistance in a reasonable timeframe. All clients, eligible or not, should expect a DHS determination with the standard of promptness. However, a DHS failure to meet a standard of promptness does not justify making an ineligible client into an eligible client. Though the undersigned sympathizes with Claimant's argument, the remedy which Claimant seeks

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is inappropriate. It is found that DHS exceeded the standard of promptness for issuing a determination of MA benefits to Claimant, however, Claimant is not entitled to a remedy which would make him asset-eligible for MA benefits during a time when he was asset-ineligible.

DECISION AND ORDER

The actions taken by DHS are AFFIRMED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's application for MA benefits on 6/30/09 and that Claimant is not entitled to any remedy due to the failure by DHS to issue the determination within their standard of promptness.

/s/



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: September 22, 2010

Date Mailed: September 22, 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 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.

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