

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.: 2010-36806
Issue No.: 2012
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 25, 2010
DHS County: Wayne (52)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on October 25, 2010. [REDACTED] for Claimant, appeared and testified on behalf of Claimant, who did not appear. [REDACTED] appeared and testified on behalf of the Department of Human Services (DHS). [REDACTED], DHS, was also present at the hearing.

ISSUE

Whether Claimant is eligible for Medical Assistance (MA or Medicaid) benefits?

FINDINGS OF FACT

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

1. On August 25, 2009, Claimant applied for Medicaid benefits with DHS.
2. On October 6, 2009, DHS sent a Verification Checklist, DHS Form 3050, to Claimant requesting all current [within last (sic) 30 days] bank statements, Claimant's prepaid burial contract, and a Retroactive Medicaid Application, DHS Form 3243.
3. October 15, 2009, was DHS' requested date for Claimant's submission of documents.
4. On October 20, 2009, Claimant submitted nine documents to DHS, including her [REDACTED] statement for September 11-October 9, 2009.

5. Also on October 20, 2009, Claimant submitted her Retroactive Medicaid Application, requesting benefits as of May 1, 2009.
6. Claimant's Retroactive Medicaid Application contained income and asset information for the months of May, June and July, 2009.
7. On October 26, 2009, Claimant faxed the [REDACTED] prepaid burial contract to DHS.
8. On January 16, 2010, DHS denied Claimant's MA application, giving as its reason Claimant's failure to provide DHS with information needed to determine eligibility.
9. On March 5, 2010, Claimant filed a hearing request with DHS.

CONCLUSIONS OF LAW

MA was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. DHS administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

In this case, DHS asserts it followed DHS policy when it closed Claimant's case for failure to submit documentation by the October 15, 2009 deadline. DHS cites three of its policies in support of its position: BAM 105, BAM 130 and BEM 400. I will begin with an examination of these three policy Items to determine if they require DHS to impose a deadline.

The first policy cited by DHS is BAM 105, "Rights and Responsibilities." I have reviewed this Item in its entirety and I find there is no deadline requirement and nothing in this section that requires DHS to deny an application when a client fails to meet a due date. I will review the seven pertinent portions of BAM 105, which consists of thirteen pages, here. I believe, when taken individually and as a whole, these seven sections of BAM 105 are relevant to my conclusion that DHS cannot deny an application for failure to meet a due date, and further, that according to BAM 105, client cooperation is the most important feature of the application process.

I note first that none of the manual sections DHS cited to the Administrative Law Judge contain the word "deadline." BAM 105 states that DHS must "allow" ten days, but nowhere does it state that this is a mandatory deadline that limits DHS from granting

benefits. I conclude that BAM 105 does not require a ten-day deadline, nor does it state that DHS must limit verification to a ten-day period. BAM 105, p. 5.

In fact, the use of the word “allow” causes me to interpret this section to mean that a client must be allowed a *minimum* of ten days and that this section is intended to protect clients from being required by DHS to produce documents in unreasonably short time frames. I think this interpretation is more sensible and more in keeping with the cooperative intent of BAM 105. I think the use of the word “allow” in this context indicates that DHS has substantial discretion in setting verification timelines.

This interpretation is consistent with the penalty provision of BAM 105 as well. I find that BAM 105 provides penalties only when a client refuses to cooperate and not when a client has difficulty providing verification. I read BAM 105 essentially to mean that as long as the client is cooperating, DHS should be flexible in its requests for verification. On page 5 it states:

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. See Refusal to Cooperate Penalties in this section.... Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. *Id.*, p. 5.

BAM 105 continues in this vein, stating with regard to the refusal to cooperate:

Refusal to Cooperate Penalties

All Programs

Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. *Id.*, p. 5.

Here too, in BAM 105, I read the paragraph to mean that client cooperation is more important than fulfilling due dates, because only a refusal to cooperate subjects a client to penalties, and a mere delay in submission of verification is not penalized. *Id.*, p. 6.

The intent of BAM 105, that DHS is there to enable and facilitate benefits rather than to enforce rigid rules, is further set forth on page 8, where it states that

... [c]lients *must* take actions within their ability to obtain verifications. DHS staff *must* assist when necessary. *Id.*, p. 8 (italics added for emphasis).

I read this sentence to mean that cooperation is the cornerstone of DHS procedure because DHS programs are social welfare programs established to assist people in need. In order to achieve the intended social welfare goal intended by the programs, it is not necessary to enforce procedures in a rigid and unbending manner.

Indeed, BAM 105 requires DHS to act, in essence, as a protector of clients' rights. At the outset of BAM 105, it states:

RIGHTS AND RESPONSIBILITIES

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.

Id., p. 1 (bold print in original).

I read this opening section of BAM 105 to mean that DHS must fulfill these duties, and it is subject to judicial review of its fulfillment of these duties. If it is found that DHS failed in any duty to the client, it has committed error.

Now, BAM 105 also contains a provision relating specifically to MA benefits. Page 9 states that

... [t]he requirement to provide specific eligibility information is satisfied by the eligibility information on the application form. *Id.*, p. 9.

I read this section to mean that, if the eligibility information is supplied on the application, then verification is not required at the eligibility stage. If the information is on the application, then verification can occur at a later date and does not prohibit DHS from making an eligibility decision. *Id.*

My last recitation from BAM 105 relates to DHS' responsibility to attempt to resolve the issue before the hearing. This is stated in BAM 105 as follows:

Hearing Request

Attempt to resolve the issue prior to the hearing (see **"LOCAL OFFICE REVIEW"** in BAM 600):

- If the group agrees to cooperate with the QC review and withdraw the hearing request, notify the auditor by telephone and follow-up memo.
- If the issue remains unresolved, request the auditor's attendance at the hearing to provide evidence.

Id., p. 6.

I read this section to mean that a Quality Control person is supposed to review the file before the hearing. I assume, for purposes of this decision, that DHS personnel are acting as their own Quality Control, as no Quality Control person appeared at the hearing. In any event, I read this section to mean that, if there is a way to resolve a problem, it is DHS' responsibility to make a good-faith attempt to do so.

I now turn to the second manual section which DHS cited to me, BAM 130, "Verification and Collateral Contacts." This Item contains a special requirement for verifications in MA benefits cases:

Effective June 1, 2008

MA Only

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 up to three times.** BAM 130, p. 4 (bold print added for emphasis).

I read this section to mean that MA applications are to be given even greater latitude as to the amount of time provided to submit necessary documentation.

Third and last, I have reviewed BEM 400, "Assets," and I find that this manual Item lists and defines all of the assets that DHS must consider. As the nature of the assets in this case is not in question, I find that BEM 400 has no relevance to the issues I must decide.

Having identified the relevant legal authority for my decision, I now proceed to my analysis of how the law applies to the facts of the case at hand. DHS asserts that Claimant failed to provide it with timely information, while Claimant asserts that she did. The information in dispute consists of two pieces of information: three bank statements for May, June and July, 2009, and, the prepaid burial contract.

First, with regard to the bank account statements for May-July, 2009, I find that these documents were not required until October 20, 2009, when the Retroactive Application was filed. However, after October 20, even though all the income and asset information was already written on the application form, DHS failed to protect the client's rights by requesting verification. Pursuant to BAM 105, DHS should have afforded Claimant the opportunity to provide verification for the information on her October 20 application. DHS did not send out a Verification Checklist after the Retroactive Application was filed, and it never asked for verification, going instead directly to a denial of benefits. DHS, at a minimum, failed to allow Claimant ten days after the submission of the Retroactive Application on October 20, to provide the three bank statements.

I find and conclude that DHS failed to protect client rights when it did not provide a minimum of ten days to Claimant to submit the three bank statements needed for her October 20, 2009, Retroactive Medicaid Application.

Second, looking at the cemetery contract, Claimant requested an extension to submit this in her fax letter of October 20, 2009, in which Claimant wrote that it would be faxed the following day. I find that the fact that it was not faxed until October 26, five days later, constitutes cooperation as required by the law. I further find that DHS claimed that it did not receive the burial contract until the October 25, 2010, hearing. I find this to be inconsistent with the confirmation form, fax letter, and attachments in the DHS file dated October 26, 2009.

I find this inconsistency is resolved by making an inference that, after the due date of October 15, 2009, DHS put the file into an inactive or other closure status file drawer and did not review any subsequent documents Claimant sent to them. Instead, any such documents were merely placed in the file or otherwise disposed of, and were not reviewed to see if they met the verification requirements. While this may be

understandable as far as administrative convenience, I find that it failed to protect Claimant's rights to benefits when she cooperated.

In conclusion, as DHS failed to provide Claimant at least ten days to submit bank statements verifying her May-July 2009 assets and, second, because DHS failed (1) to assist Claimant by reviewing the faxed burial contract in a timely fashion, (2) to accept Claimant's eligibility information on the Retroactive Application, and (3) to attempt resolution of the case before the hearing, I find that DHS acted incorrectly and is REVERSED. DHS is ORDERED to process Claimant's Retroactive Medicaid Application, making any additional verification requests with specificity and affording Claimant at least three extensions of time to fulfill requirements, if necessary. DHS shall act in accordance with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS is REVERSED. DHS is ORDERED to process Claimant's Retroactive Medicaid Application, determine eligibility and grant benefits as appropriate in accordance with DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 27, 2010

Date Mailed: October 27, 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.

JL/pf

cc:

