

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

IN THE MATTER OF:



Reg. No: 201039039
Issue No: 2000
Case No: [REDACTED]
Hearing Date:
October 11, 2011
Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

ORDER OF DISMISSAL

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 hearing was held on October 11, 2011.

ISSUE

Did the Department fail to process claimant's benefit application of March 31, 2008?

FINDINGS OF FACT

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

- (1) On October 12, 2007, claimant filed with [REDACTED] an authorization to represent, allowing [REDACTED] to serve as her authorized representative.
- (2) Claimant died on January 4, 2008.

- (3) On March 31, 2008, [REDACTED] filed an application for Medicaid benefits, retroactive to December 2007.
- (4) The Department denied this application on May 30, 2008, for failing to provide proper verifications.
- (5) On September 29, 2008, [REDACTED] was appointed by the State of Michigan Probate Court for Macomb County as a special personal representative of the estate of the claimant.
- (6) This appointment was a limited appointment, only allowing [REDACTED] the power to “collect and marshal assets and arrange funeral and burial or other disposition of the remains, only.”
- (7) On October 29, 2008, [REDACTED] appointed [REDACTED] an authorization to represent claimant’s estate.
- (8) No other authorization to represent has ever been granted to [REDACTED] [REDACTED].
- (9) On November 10, 2008, [REDACTED] requested a hearing on behalf of the claimant’s application denial of May 2008.
- (10) Among other things, [REDACTED] contested that the notice given in May 2008 was defective, in order to avoid timeliness standards for requesting a hearing.
- (11) On November 20, 2008, [REDACTED] was appointed by the State of Michigan Probate Court for Macomb County as the personal representative of the estate.
- (12) [REDACTED] was authorized on that date to “perform all acts authorized by law”.

- (13) This letter expired on November 17, 2010.
- (14) On November 25, 2008, [REDACTED] withdrew their request for hearing, allegedly because the Department agreed to reprocess the March 31, 2008 application.
- (15) The Department never reprocessed the March 31, 2008 application.
- (16) On February 16, 2010, [REDACTED] filed a second request for hearing, arguing that the Department failed to process the March 31, 2008 application as agreed.
- (17) On October 11, 2010, a hearing was held before the Administrative Law Judge.
- (18) The Department was represented by Emily Noetzel, an Eligibility Specialist.
- (19) [REDACTED] was represented by [REDACTED].

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Under Bridges Administrative Manual Item 600, clients have the right to contest any negative agency decision affecting eligibility or benefit levels whenever they believe

the decision is illegal. A claimant may also contest at any time the amount of their FAP grant. Claimant's have 90 days from the date of the action to request a hearing.

Only an adult member of the eligible group or the client's authorized hearing representative (AHR) have authority to request a hearing. BAM 600. The appointment of an AHR must be made in writing. BAM 600. An AHR must be authorized before signing a hearing request for the client. BAM 600. A probate court order or court issued Letters of Authority naming the person as guardian or conservator is an acceptable verification for appointing an AHR.

After reviewing the documents and facts of the case, the Administrative Law Judge must dismiss the case at hand, because there is no jurisdiction to hear the case at hand.

Claimant first appointed [REDACTED] as her AR and AHR on October 12, 2007. This appointment was short-lived; on January 4, 2008 claimant died, and at that time, this Authorization of Representation ended. An authorization to represent is a form of a power of attorney. When the person who gave the authorization dies, the power of attorney ends. After death, the person does not exist as a legal entity, so no one can represent the person. BAM 110; MCL 700.497; MCL 700.5504.

On September 29, 2008, the State of Michigan Probate Court for Macomb County issued a Letter of Authority for Special Personal Representative to a [REDACTED]. This appointment of special personal representative was limited, only allowing [REDACTED] to "collect and marshal assets and arrange funeral and burial or other disposition of the remains". At no point did this Letter of Authority appoint [REDACTED] as the conservator or personal representative of the estate. [REDACTED]

was only allowed to collect and marshal assets—a legal term of art for, generally speaking, the ranking and disposition of property to meet the stated intentions of the testator—and arrange for funeral and burial of the claimant. As this Letter of Authority was extremely limited, [REDACTED] had no power to appoint [REDACTED] as an AHR; according to the documentation in the file, [REDACTED] was not granted power as the personal representative of the estate until November 20, 2008.

However, on October 29, 2008, [REDACTED] appointed [REDACTED] as the authorized hearing representative of the claimant. There is no evidence in the case record that [REDACTED] had that power; at this point in time, the only documentation on record is that of special personal representative, discussed above. The undersigned, after examining that documentation, holds that it was insufficient for granting [REDACTED] [REDACTED] the power of AHR for the claimant's estate. Therefore, as [REDACTED] did not have the power to appoint an AHR for the claimant's estate, [REDACTED] could not have been the claimant's AHR at that time. [REDACTED] could only have appointed an AHR after November 20, 2008.

As such, [REDACTED]' request for hearing on November 10, 2008 was therefore invalid. [REDACTED] was not the AHR at that time; therefore, [REDACTED] [REDACTED] had no power to request a hearing, per BAM 600.

Furthermore, it should be noted that at no point in the file does [REDACTED], subsequent to his appointment as the estate's personal representative, give [REDACTED] [REDACTED] the power to act as claimant's AHR. The only appointment in the file is that of October 29, 2008, delivered at a time when [REDACTED] did not have the authority to grant [REDACTED] the power as AHR. As there has been no subsequent

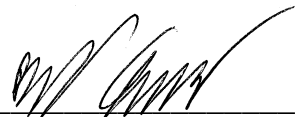
appointment of an AHR, any subsequent request for hearing, including the hearing request of February 16, 2010, by [REDACTED], is invalid. [REDACTED], upon a close examination of the record, **has never been legally appointed as the claimant's estates' Authorized Hearing Representative.**

Therefore, as [REDACTED] has never been appointed as an AHR, the undersigned is unable to hear their requests for hearing. [REDACTED] has no power as an AHR, and therefore, no right to request a hearing. As [REDACTED] have no right to request a hearing, the undersigned holds that there is no valid hearing request in the current case. Therefore, the current request for hearing must be DISMISSED, as there is no jurisdiction to hear the case at hand.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that there is no jurisdiction to hear the case at hand.

Accordingly, this case is, hereby, DISMISSED.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 03/03/11_____

Date Mailed: 03/08/11_____

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.

RJC/dj

cc:

