

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: 2010-3938

Issue No: 2000

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 24, 2009

Saginaw 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 November 24, 2009. Claimant personally appeared and testified. She was assisted by [REDACTED]

ISSUE

Was claimant's hearing request timely filed?

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 December 9, 2008, [REDACTED] represented claimant at a contested case hearing regarding a Medicaid (MA) eligibility determination.

(2) At the hearing's conclusion, the presiding Administrative Law Judge noted the department's witness gratuitously offered to submit claimant's medical records to the

department's Medical Review Team (MRT) for a determination about her eligibility or lack thereof, and thus, [REDACTED] issued an Order for her to take that action (Department Exhibit #1, pgs 1-6).

(3) The department's witness in that proceeding was claimant's assigned caseworker throughout the entire disputed application processing period, starting with the application's receipt and ending with issuance of the written denial notices as required by departmental policy located in BAM Item 115.

(4) After reviewing claimant's medical records, on December 26, 2008, MRT determined claimant did not meet the disability standard necessary to qualify for MA and notified claimant's caseworker of this decision.

(5) On January 22, 2009, claimant's caseworker mailed denial notices to claimant and to her authorized representative at their respective addresses-of-record (Department Exhibit #1 and #2).

(6) On September 3, 2009 (more than seven months after claimant's caseworker mailed these notices), [REDACTED] filed a hearing request alleging failure to receive notice.

(7) Claimant's hearing was held on November 24, 2009, again with assistance from [REDACTED]

(8) The [REDACTED] presenter acknowledged at hearing his duties do not include opening, sorting or distributing mail sent to [REDACTED]

(9) Claimant confirmed she has no recollection of what she did or did not receive, or of any discussions she may have had with [REDACTED] during the relevant period because her emotional state was critically unstable during that time.

(10) The department's witness testified from personal knowledge she distinctly recalls mailing these denial notices to claimant and [REDACTED], after which, she made photocopies of the notices for the department's case file as is her standard practice (See also Finding of Fact #6 above).

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 department's policy states in relevant part:

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.

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

Additionally, Michigan's case law is well settled in this area. It provides as follows:

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

The fatal flaw in [REDACTED] argument is that they provided no competent evidence to rebut the department's witness's credible testimony and reliable documentation. Consequently, this Administrative Law Judge finds the disputed notices were, in fact, mailed to both interested parties of record on January 22, 2009. If this notice was inadvertently lost, misfiled, misrouted, or separated from claimant's file after it reached the [REDACTED] office, that circumstance cannot be held against the department. They followed policy to the letter in this case.

Furthermore, the above-referenced policy and Administrative Rule requires filing of a hearing request to occur within 90 calendar days from the mailing of written notice of case action. The evidence in this case is clear and undisputable. [REDACTED] did not file a hearing request until more than seven months after claimant's caseworker mailed the disputed notice. As such, that hearing request is simply untimely. Consequently the status quo must remain intact. The disputed application denial must stand.

Claimant should be aware that nothing in the department's policy prohibits the filing of a subsequent MA application. If she still believes the department wrongfully issued a disability disallowance, that course of action may be pursued.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant's hearing request was untimely filed.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: December 2, 2009

Date Mailed: December 8, 2009

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:

