IN THE MATTER OF:

Reg. No.:	2011-13956
Issue Nos.:	2006, 4003
Case No.:	██████
Hearing Date:	February 17, 2011
DHS County:	Wayne (82-82)

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 ███████████ request for a hearing. After due notice, a telephone hearing was held on February 17, 2011. Claimant appeared and testified. ██████████████████████, and █████████████████████████ ████████, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant is eligible for Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) 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.   At some time in 2010, Claimant began receiving Adult Medical Program (AMP) and Food Assistance Program (FAP) benefits from DHS.

2.   On September 21, 2010, Claimant applied for MA and SDA benefits with DHS.

3.   On October 22, 2010, DHS sent Claimant a Psychiatric/Psychological Examination Report, DHS Form 49D, requesting her to provide "promptly" to DHS a Psychiatric/Psychological Examination Report. Department Exhibit 1, p. 10.

4.   On November 1, 2010, DHS issued a Notice of Case Action, DHS Form 1605, denying Claimant's application. *Id.,* p. 3.

5.   On November 3, 2010, Claimant submitted her psychiatrist's report and medical records from █████████████████████████████████. *Id.,* pp. 9-22, 24-25.

6.   On January 10, 2011, Claimant filed a Request for a Hearing 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 (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

SDA provides financial assistance for disabled persons and is established by 2004 Michigan Public Acts (PA) 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3151-400.3180. DHS' SDA policies are found in BAM, BEM and RFT. *Id.*

The administrative manuals are the policies and procedures DHS officially created for its own use. While the DHS manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policy is, I will examine whether it was in fact followed in this case.

BAM 105, "Rights and Responsibilities," is cited in the Hearing Summary DHS prepared for this Administrative Hearing. I agree that BAM 105 is applicable in this case.

BAM 105 requires DHS to administer its programs in a responsible manner to protect 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 DHS 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.

In addition, I read BAM 105 to mean that as long as the client is cooperating, DHS can and 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.

I next turn to a manual section which DHS did not cite 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 applicants are to be given even greater latitude as to the amount of time provided to submit necessary documentation.

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 necessary information in ten days and she is therefore ineligible. The information in dispute consists of a psychiatric report and medical records.

Applying this policy to the case at hand, I find and conclude that DHS requested Claimant to respond "promptly" but then turned around and accorded her only the minimum ten-day turnaround time in which to submit medical verification. I find and
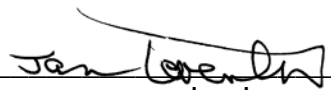
determine that this is exactly the type of case management that BAM 105 is intended to prevent, i.e., failing to tell customers what the timeline is and then holding them to a timeline they know nothing about. Such a procedure also denies the customer the right to request extensions of time, because the customer has no reason to believe a request is necessary. I find this is not the protection of clients rights that is contemplated in BAM 105.

First, I find and determine that DHS erred by failing to inform Claimant she had a ten-day time period in which to provide medical documentation. Second, I find and conclude that twelve days fulfills DHS' indefinite request to respond "promptly" set forth in the notice to Claimant. Third, I find and conclude that Claimant exhibited full cooperation when she submitted medical documents twelve days after they were requested of her. Fourth, I find that Claimant's medical records and the report in the record are sufficient for the Medical Review Team (MRT) to make an initial disability determination and MRT erred in failing to do so.

In conclusion, based on the above findings of fact and conclusions of law, I conclude and determine that DHS erred in failing to process Claimant's application. I find that DHS acted incorrectly and is REVERSED. DHS is ORDERED to reinstate and reprocess Claimant's MA/SDA application and to resubmit Claimant's medical records and medical report to MRT in order for MRT to determine disability. 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. IT IS ORDERED that DHS shall reinstate and reprocess Claimant's MA/SDA application, including resubmission to MRT, in accordance with DHS policies and procedures.

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Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 28, 2011

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Date Mailed: March 3, 2011

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.

JL/pf

cc: