

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-18623
Issue No.: 2000
Case No.: [REDACTED]
Hearing Date: June 30, 2011
DHS County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon L & S Associates, Inc. request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on Thursday, June 30, 2011. The Claimant is deceased. [REDACTED] appeared on behalf of [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly denied L & S Associates, Inc. the October 28, 2008, application for Medical Assistance ("MA-P") filed on behalf of the Claimant/decedent.

FINDINGS OF FACT

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

1. The Claimant [REDACTED] passed away on [REDACTED].
2. On October 28, 2008, [REDACTED] submitted an application for public assistance seeking MA-P benefits, retroactive to July 2008, on behalf of the Claimant/decedent.
3. On January 2, 2009, the Claimant/decedent's mother signed an Authorization to Represent, purportedly authorizing [REDACTED] to represent the Claimant/decedent.
4. On April 28, 2009, the Department received the written request for hearing from [REDACTED] dated April 14, 2009. (Exhibit 3)

5. On December 11, 2009, the State Office of Administrative Hearings and Rules ("SOAHR"), currently the Michigan Administrative Hearing System ("MAHS"), sent a letter stating that a hearing would not be scheduled because there was no proper authority to represent the Claimant/decedent.
6. On February 23, 2010, the Probate Court appointed [REDACTED] as Personal Representative for the Claimant/decedent for the sole purpose of filing a Medicaid application and to direct payment to [REDACTED]. (Exhibit 1)
7. On this date, [REDACTED] signed an Authorization to Represent authorizing [REDACTED] to act as the Authorized Representative for the Claimant/decedent. (Exhibit 2)
8. On October 6, 2010, the SOAHR received the Representative's Request for Rehearing/Reconsideration to specifically address whether proper authorization to proceed on behalf of the Claimant/decedent existed. (Exhibit 8)
9. On December 13, 2010, a hearing was held which resulted in a dismissal, dated January 3, 2011, based on the fact that [REDACTED] was not authorized to request a hearing on behalf of the Claimant/decedent in April 2009. (Exhibit 4)
10. On or about February 1, 2011, a Request for Rehearing/Reconsideration of the January 3rd Order of Dismissal was received by MAHS. (Exhibit 5)
11. On March 2, 2011, an Order Granting Rehearing was entered. (Exhibit 7)
12. On March 22, 2011, a hearing was held resulting in an Order Vacating the January 3rd Order of Dismissal. (Exhibit 6)
13. The Order Vacating the January 3rd Order of Dismissal ordered the scheduling of a hearing regarding the April 14, 2009, Request for Hearing.

CONCLUSIONS OF LAW

MA-P is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, formerly known as the Family Independence Agency, 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 ("RFT").

A request for public assistance may be in person, by mail, telephone or by an internet application. BAM 110. Clients must complete and sign public assistance applications.

BAM 115. An application is incomplete until enough information is provided to determine eligibility. BAM 115. Registered applications must contain, at a minimum, the name, birth date, and address of the applicant, along with the signature of the applicant or authorized representative. BAM 105. Retro-MA coverage is available back to the first day of the third calendar month prior to the application date. BAM 115. The date of application is the date the local office receives the required minimum information on an application. BAM 110.

Application for MA benefits may be made on behalf of a client by the spouse, parent, legal guardian, adult child, stepchild, specified relative, or any other person provided the person is at least age 18 or married. BAM 100. If the person is not a spouse, parent, legal guardian, adult child, stepchild, or specified relative, the person must have a signed authorization to act on behalf of the client, by the client, client's spouse, parent(s), or legal guardian. BAM 100. The application form must be signed by the client or the individual acting as the Authorized Representative ("AR").

Any person, regardless of age, or his AR, may apply for assistance. BAM 110. An AR is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf. BAM 110. For MA purposes, an AR must be an adult child or stepchild; a specified relative; designated in writing by the client; court appointed; or a representative of an institution (such as jail or prison) where the client is in custody. BAM 110; MCL 700.3617 An application may be made for a deceased person. BAM 110.

An AR is **not** the same as an authorized hearings representative ("AHR"). BAM 110. An AHR is defined as the "person who stands in or represents the client in the hearing process **and** has the legal right to do so." BAM 110. This right is derived from the following sources:

- (a) written authorization, signed by the client, giving the person the authority to act for the client in the hearing process;
- (b) court appointment as a guardian or conservator;
- (c) the representative's status as legal parent of a minor child;
- (d) the representative's status as attorney at law for the client; or
- (e) for MA only, the representative's status as the client's spouse, or the deceased client's widow or widower, only when no one else has the authority to represent the client's interest in the hearing process.

An AHR must be authorized, or have made an application through probate court **before** signing a hearing request for the client. BAM 600.

In this case, in October 2008, an application was submitted by [REDACTED] on behalf of the Claimant/decedent approximately 2 months after her death. At the time of filing, the Claimant/decedent's mother had not designated, in writing, [REDACTED] as the AR. The AR designation was not given until January 2, 2009. Thus, the October 2008 application did not contain a signature of the client or AR. Despite not having any authority to file the application on behalf of the Claimant/decedent, it appears that the Department began to process the application culminating in the April 2009 Request for Hearing. As discussed above, only an AHR, as opposed to an AR, may request a hearing on behalf of a decedent. It should be noted, that the decedent was not a minor child. Clearly, in April 2009, [REDACTED] was not an AHR. The distinction between an AR and an AHR is that the AHR has a legal right to stand in for, or represent, the claimant/decedent in the hearing process. An AHR must be authorized, or have made an application through probate court before signing a hearing request on behalf of the Claimant/decedent. This was not done. The Probate Court did not appoint a Special Representative until February 23, 2010, well after the application and the Request for Hearing were submitted.

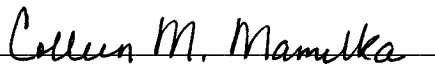
In light of the foregoing, it is found that at the time of application, [REDACTED] was not authorized as AR to file an application on behalf of the Claimant/decedent. In addition, it is found that at the time the Request for Hearing was submitted in April 2009, [REDACTED] was not an AHR and, thus, lacked the requisite authority to request a hearing on behalf of the Claimant/decedent. Accordingly, due to the lack of proper authority throughout the processing of this case, the April 2009 Request for Hearing is DISMISSED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that because [REDACTED] was not the AHR at time of the Request for Hearing in April 2009 was submitted and, thus, lacked the legal authority to do so, it is improper to decide the underlying matter in dispute.

Accordingly, it is ORDERED:

The April 2009 Request for Hearing is DISMISSED.



Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 12, 2011

2011-18623/CMM

Date Mailed: July 13, 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.

CMM/pf

cc:

