

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.: 2011-3460
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: January 31, 2011
DHS County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on January 31, 2011. Claimant did not appear. Claimant's Authorized Representative, [REDACTED], appeared and testified on behalf of Claimant. [REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS properly processed Claimant's Medical Assistance (MA or Medicaid) and MA retroactive applications?

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 October 30, 2008, Claimant applied for MA and MA retroactive benefits with DHS.
2. On June 16, 2010, DHS sent Claimant a Medical Determination Verification Checklist requesting verification that he applied for Supplemental Security Income (SSI) benefits with the U.S. Social Security Administration (SSA) by June 28, 2010.
3. On or before June 28, 2010, Claimant requested, and DHS granted, a ten-day extension of time in which to submit verification.

4. On June 30, 2010, Claimant applied for SSI benefits.
5. On July 7, 2010, Claimant faxed an update on his Social Security application status to DHS, informing DHS that he would be meeting with SSA on July 20, 2010.
6. On July 9, 2010, relying on an erroneous DHS Status On-Line Query (SOLQ), DHS determined that Claimant did not apply for SSI and issued a Notice of Case Action denying Claimant's MA applications.
7. On October 6, 2010, Claimant filed a hearing request with DHS.
8. On October 13, 2010, DHS learned that Claimant applied for SSI on June 30, 2010.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. 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. The Department's policies and procedures 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.

The manuals are the day-to-day operating instructions for all DHS activity. While the 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.

I have first considered whether there are issues of timeliness in this case. Michigan Administrative Code Rule 400.904 requires that a hearing request must be filed within ninety (90) days of the DHS action in dispute. I find and conclude that Claimant's Hearing Request was filed on the eighty-ninth day after the disputed action and, therefore, the hearing request was made in a timely fashion. Upon review of all of the testimony and evidence in this case, I find no other issues of timeliness are present.

In this case, I next determine that BAM 105, "Rights and Responsibilities," is the DHS Manual Item which shall be applied. The first section of BAM 105, titled "Department Policy," establishes Claimant's rights and DHS' corresponding duties, as follows:

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. BAM 105, p. 1 (emphasis in original).

DHS policy also states that Claimant, on his part, must cooperate with DHS:

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

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. *Id.*, p. 5.

I have reviewed all of the testimony and evidence in this case as a whole. My first conclusion of law is that Claimant has met the BAM 105 standard of cooperation in this case. On July 7, 2010, Claimant gave DHS information about the status of his SSI application, and not only did this fulfill DHS' request for information satisfactorily, it did so in a timely fashion within the ten-day extension period. I find and conclude that there is nothing in the record to indicate that Claimant refused to cooperate with DHS in this matter.

As I have found that Claimant cooperated with DHS as required, I next consider whether DHS fulfilled its BAM 105 responsibilities to Claimant. Having reviewed all of the evidence and testimony as a whole in this case, I find and conclude that DHS failed to provide all three BAM 105 rights to Claimant. Looking first at whether DHS protected client rights, which is the third requirement in BAM 105, I find and conclude that DHS failed to protect client rights in this case. I find that on July 7, 2010, DHS had information that Claimant was meeting with SSA about his SSI benefits. I find and conclude that DHS knew that Claimant was pursuing his SSI benefits and was cooperating fully with DHS by informing DHS about the status of his SSI benefits. I find and decide that based on his communication to DHS, Claimant was entitled to have DHS protect his right to apply for MA and MA-retroactive benefits.

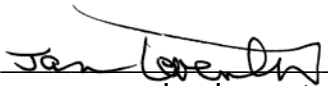
However, instead of protecting Claimant's right to apply, I find and conclude that DHS rejected Claimant's efforts and chose instead to rely on a July 9, 2010, DHS computer inquiry. I find that this constitutes reversible error on the part of DHS and must be reversed. I find and determine that as a result of its failure to honor and protect Claimant's right to apply, DHS failed to determine whether Claimant was eligible for benefits and the amount of the benefits, if any, that he should receive. These are the first and second requirements of BAM 105, and I do find they were not provided to Claimant.

I find and determine that BAM 105 must be observed in this situation. I find and decide that Claimant is entitled to have his applications processed, and DHS has the duty and responsibility to do this. I determine that the remedy is reversal of DHS' action. DHS shall reopen and process Claimant's October 30, 2008, applications in accordance with DHS policies and procedures.

In conclusion, based on the findings of fact and conclusions of law above, I find and conclude that DHS shall be REVERSED in this case. IT IS ORDERED that DHS shall reopen and process Claimant's October 30, 2008, MA applications in accordance with DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS' action was in error and shall be REVERSED. IT IS ORDERED that DHS shall reopen and process Claimant's October 30, 2008, MA and MA-retroactive applications in accordance with this decision and DHS policy and procedure.



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

Date Signed: February 8, 2011

Date Mailed: February 9, 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

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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:

