

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-34673  
2010-40360  
Issue No.: 2000  
Case No.: [REDACTED]  
Hearing Date:  
January 24, 2012  
Oakland (2) County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Lansing on January 24, 2012. The Claimant's authorized representative, [REDACTED] of [REDACTED], Inc., appeared and testified.

ISSUE

Whether the authorized representative is entitled to a currently dated denial notice of a previously denied Medical Assistance (MA) application?

FINDINGS OF FACT

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

- (1) On January 27, 2009, the Claimant submitted an application for public assistance seeking MA and retro-MA benefits.
- (2) On March 23, 2009 the department caseworker sent claimant a verification checklist with information due April 3, 2009.
- (3) After asking for two extensions of time [REDACTED] completed the checklist on April 22, 2009.
- (4) On July 1, 2009, the department caseworker sent claimant notice that his application was denied because he did not mark that he was disabled on his application and because he was not a caretaker relative of a minor

child because he was not living with the mother of his child for October or November 2008.

- (5) On December 3, 2009, [REDACTED] filed a request for a hearing to contest the department's negative actions and stating that the notice of case action DHS-1150/4598 was never forwarded to [REDACTED].
- (6) On September 21, 2010, a hearing was held before Administrative Law Judge [REDACTED].
- (7) On October 10, 2011, ALJ Sundquist issued an Order of Dismissal stating that "both parties agreed to the negative case action (retro MA application on January 27, 2009 denied July 1, 2009) with a hearing request on December 3, 2009. therefore this ALJ has no legal jurisdiction to conduct and untimely hearing (over 90 days) per MAC R 400.902(4)."
- (8) On May 19, 2011 L and S Associates filed a request for a rehearing/reconsideration stating that they did not receive a copy of the hearing decision, and that the Authorized Hearing representative did not stipulate that the hearing request was untimely because no notice of case action was ever received by [REDACTED].
- (9) On December 13, 2011, Administrative Law [REDACTED] granted the request for rehearing.
- (10) On January 24, 2012, a rehearing was conducted.
- (11) At the rehearing [REDACTED] withdrew the hearing request on the record and agreed to forward a hearing withdrawal to the Michigan Administrative Hearing System.
- (12) After the hearing record closed, [REDACTED] representative contacted [REDACTED] via telephone call and asked if the ALJ would issue a denial decision instead of a withdrawal so that they could pursue other avenues of collection.
- (13) This ALJ notified the [REDACTED] that the telephone contact was ex parte communication and that he should contact the department and request that the department representative stipulate to the entrance of a denial instead of a withdrawal since the record was closed.

#### CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act. 42 USC 1397 and is administered by the Department of Human Services, 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 Policy Glossary (“BPG”).

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2)

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

### **Rehearing/ Reconsideration Requests**

#### **All Programs**

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

A written request made by the AHR or, if none, by the client, must be faxed to:

- (517) 335-6088- Attention: SOAHR Client Requested Rehearing/Reconsideration
- SOAHR (now MAHS) will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR (MAHS).

- Client or authorized hearing representative request -- received anywhere in DHS.

## **Granting A Rehearing/ Reconsideration**

### **All Programs**

SOAHR (MAHS) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

### **All Programs**

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR, the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BAM, Item 600.

In this case, the Claimant/Representative submitted an application for disability on January 27, 2009. The notice of denial of benefits was sent to claimant on July 1, 2009. The Authorized Hearings Representative at some time became aware of the denial (as evidenced by the December 3, 2009 hearing request), even though the AHR denies receiving a copy of the denial notice, the DHS-1150. Importantly, the Representative is **not** protesting the denial of benefits. Instead, the Representative seeks a currently dated denial in order to apply for other programs or have a second opportunity to prove eligibility of Medical Assistance on the client's behalf. Pertinent department policy and applicable law dictates that:

- The AHR or, if none, the customer has 90 calendar days from the date of the written notice of case action to request a hearing. BAM, Item 600, p. 5.
- 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).

- The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action. 45 CFR 205.10.
- The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.

This hearing request is HEREBY DISMISSED because the request for a hearing was not made within 90 days of the date of notice.

In the alternative, even if this Administrative Law Judge were able to take jurisdiction of this issue, Claimant's representative argues that lack of notice to the representative results in lack of, or insufficiency of notice. Department policy also indicates that the application forms and each written notice of case action inform clients of their right to a hearing. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. The **client** must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify:

- The action being taken by the department; **and**
- **The reason(s) for the action; and**
- **The specific manual item(s)** that cites the legal base for an action, or the regulation, or law itself. See BAM 220. BAM, Item 600, page 1.

In this case, the department did provide the client with notice as is required by Department policy. The notice did not return to the department as undeliverable. The Representative contends, without citing to any authority, that it is entitled to independent notice of denial as opposed to a copy of the previous denial.

There are two types of written notice: **adequate** and **timely**.

A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.

- The conditions under which benefits are continued if a hearing is requested.

**Adequate Notice**

An adequate notice is a written notice sent to the **client** at the same time an action takes effect (not pending). Adequate notice is given in the following circumstances:

**All Programs**

- Approval/denial of an application.
- Increase in benefits. BAM Item 220, pages 1-2.

The Representative is not entitled to a hearing solely on this issue when notice was sent to the client. The representative stands in the shoes of the client and does not retain rights which are separate from the client's. Ultimately, Request for Hearing is DISMISSED for lack of timeliness.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that since the Claimant/Representative is not contesting a department decision affecting eligibility or benefit levels the Request for Hearing is DISMISSED and the department's original denial of the application must stand.

/s/ \_\_\_\_\_  
Landis Y. Lain  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 1/26/12

Date Mailed: 1/26/12

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.

LYL/ds

■ [REDACTED]