

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-25876
Issue No: 2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: August 17, 2011
Shiawassee County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. This is a telephone hearing held August 17, 2011. The Claimant's representative, [REDACTED] from [REDACTED] appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly processed the Claimant's Medical Assistance (MA) application?

FINDINGS OF FACT

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

1. The Authorized Representative submitted a Cover letter, Facility Admission Notice, and Authorization to Represent to the Department on behalf of the Claimant on January 29, 2009. (Department Exhibit 1 pgs 4-9).
2. The Authorized Representative submitted a completed DHS-1171 Application for Assistance and DHS 3243 Retroactive Medical Assistance Application on March 6, 2009. (Department Exhibit 1 pgs 11-28).
3. The Department used the filing date of March 6, 2009 as the application date and stated that the Applicant was not eligible for Retro-MA for October, November or December 2008. (Department Hearing Summary).
4. On January 11, 2010, the Department received the Claimant's Request for Hearing.

5. On July 27, 2010, a hearing was held by Administrative Law Judge Jana Bachman.
6. Judge Bachman is no longer affiliated with the Michigan Administrative Hearing System.
7. On February 16, 2011, Administrative Law Judge Kandra Robbins issued a Decision and Order Affirming the department's decision.
8. On March 15, 2011, [REDACTED] ([REDACTED]) filed a request for a rehearing/reconsideration stating that [REDACTED] had submitted a DHS-1171 Filing form on January 29, 2009, which [REDACTED] alleges should have preserved the application date for the retroactive months of October, November, and December 2008.
9. On July 28, 2011, Administrative Law Judge Manager Marya Nelson-Davis issued an Order that a rehearing be held and assigned to Administrative Law Judge Vicki Armstrong.
10. On the date of hearing Administrative Law Judge Armstrong was unavailable and the case was reassigned to Administrative Law Judge Landis Y. Lain.

CONCLUSIONS OF LAW

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 a ssistance 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).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

A **rehearing** is a full hearing which is granted when:

- The original hearing record is inadequate for purposes of judicial review;
- There is newly discovered evidence **that existed** at the time of the original hearing, that could affect the outcome of the original hearing decision.

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 from the local office for a rehearing/reconsideration must be sent to the Division of Family Program Policy in central office for a recommendation. The written request must include all of the following:

- A copy of the decision and order.
- A copy of the hearing summary and all evidence presented at the hearing.
- Explain why a rehearing / reconsideration is appropriate.

Send requests to:

Division of Family Program Policy
Grand Tower Building, Suite 1307
PO Box 30037
Lansing MI 48909

Or fax to:
(517) 335-7771

Or email the appropriate policy email box per, BEM 100.

If OPP supports the local office request, the request shall be made a part of the record. OPP will forward the request to all parties including; MAHS, the client, AHR, and the requesting local office.

AHR or client Requests

A written request made by the AHR or, if none, by the client, must be faxed to:
(517) 335-6088- Attention: MAHSClient Requested Rehearing/Reconsideration

All Requests

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

Granting A Rehearing/ Reconsideration

All Programs

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.

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.**

MAHS will **not** grant a rehearing involving FAP-IPV.

If MAHS grants a reconsideration, the hearing decision may be modified without another hearing unless there is need for further testimony.

If a rehearing is granted, or if the need for further testimony changes a reconsideration to a rehearing, MAHS will schedule and conduct the hearing in the same manner as the original.

Implementation Pending a Rehearing

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, MAHS, 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 600, pages 33-35.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM). Department policy states:

BAM 105 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.

CLIENT RIGHTS

Right to Apply All Programs

On the **same day** a person comes to the local office, a person has the right to file an application and get local office help to provide the minimum information for filing. An application **or** filing form, whether faxed, mailed or received from the internet must be registered with the receipt date, **if** it contains at least the following information:

- Name of the applicant.
- Birth date of the applicant (not required for FAP).
- Address of the applicant (unless homeless).
- Signature of the applicant/authorized representative.

An application/filing form with the minimum information listed above must be registered in Bridges using the receipt date as the application date even if it does not contain enough information needed to determine eligibility; see BAM 110.

BAM 110 DEPARTMENT POLICY Request for Assistance

All Programs

A request for assistance may be in person, by mail, telephone or an application can be obtained on the Internet. The requester has the right to receive the appropriate application form:

- DHS-1171, Assistance Application (all programs). The DHS-1171 packet includes an information booklet and the assistance application.

A filing form used to preserve the application filing date is available on the last page of the information booklet and online at www.michigan.gov/dhs-forms.

MA Only

Receipt of a completed MSA- 2565-C, Facility Admission Notice, serves as a **request** for MA for all persons except:

- Automatically eligible newborns, see BEM 145.
- Active MA recipients.
- Pending MA or FIP applicants. **Retro MA**

Applications MA Only

The DHS-3243, Retroactive Medicaid Application, is used **along with** the DHS-1171, DHS-4574 or DCH-0373 for retro MA applications. Only one DHS-3243 is needed to apply for one, two or three retro MA months; see RETRO MA APPLICATIONS in BAM 115.

Who May Apply All Programs

Any person, regardless of age, or their authorized representative (AR) may apply for assistance. For **FAP only**, an AR must apply on behalf of certain clients; see the AUTHORIZED REPRESENTATIVES section below.

Date of Application All Programs Faxed and Paper Applications

The date of application is the date the local office receives the required minimum information on an application or the filing form. If the application or filing form is faxed, the transmission date of the fax is the date of application. Record the date of application on the application or filing form. The date of application does **not** change for FIP, SDA, MA, CDC or AMP when the application is transferred to another local office.

Response to Applications All Programs

An application or filing form, with the minimum information, must be registered on Bridges **unless** the client is already active for that programs; see REGISTERING APPLICATIONS in this item. If there is no record on Bridges, the system assigns individual ID number(s) and an application number.

MA Only

Application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, specified relative or any other person provided the person is at least age 18 or married. If this 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. The application form must be signed by the client or the individual acting as his authorized representative. When an assistance application is received in the local office without the applicant's signature or without a signed document authorizing someone to act on the applicant's behalf you must do the following:

- Register the application as a request if it contains a signature.
- Send a DHS-330, Notice of Missing Information, to the client explaining the need for a valid signature. The signature page of the application may be copied and sent to the agency or individual who filled out the application with the notice.

- Allow 10 days for a response. You cannot deny an application due to incompleteness until 10 calendar days from the date of your initial request in writing to the applicant to complete the application form or supply missing information, or the initial scheduled interview.
- Record the date the application or filing form with the minimum information is received. The application must be registered and disposed of on Bridges, using the receipt date as the application date. An application received from an agency is acceptable if it is signed by an individual and is accompanied by written documentation from the client authorizing the agency to act as their authorized representative.

In this case, on [REDACTED] the Claimant's Authorized Representative submitted a cover letter, MSA 2565-C Facility Admission Notice, and Authorization to Represent the Claimant to the Department. The Authorized Representative did not file a DHS 1171 Application for Assistance or a Filing Form at that time.

BAM 110 specifically states that a completed MSA 2565-C Facility Admission Notice is a **request** for assistance. It is not an Application for Assistance or filing form as defined by policy. BAM 105 states that an application or a filing form would be registered upon receipt by the Department. This includes incomplete applications with a minimum of information.

The Authorized Representative in this matter neglected to file the Application for Assistance or the filing form despite the Authorized Representative clearly having the required minimum information available. The fact that the Authorized Representative called the Facility Admission Notice an incomplete application does not change it from the request for assistance as defined in BAM 110. The Authorized Representative gave no explanation for the delay in filing the Application for Assistance. The Authorized Representative clearly had access to the information necessary to complete the filing form or application as the required minimum information is contained in the Facility Admission Notice. The Authorized Representative did not file the required application for assistance or filing form.

The Authorized Representative failed to complete the required Application for Assistance or Filing form. The letter from the Authorized Representative dated [REDACTED] indicates that the Authorized Representative would send the 1171 Application for Assistance upon completion. Therefore, it is clear that the Authorized Representative had the necessary Application form but did not submit it to the Department at that time. The authorized representative actually received authorization to represent claimant on [REDACTED] and could have filed an application on that date to preserve the

month of [REDACTED]. The Authorized Representative did not file the Application for Assistance until [REDACTED]. This is the application date as defined by policy as it was the date the Application or filing form was received by the department. Because an Application was not received until [REDACTED] the Department was unable to process any request for assistance until that time. Retroactive Medicaid is only available for 3 months prior to the Application date. Therefore, the Claimant would only be eligible for retroactive Medicaid from 3 months prior to the March application date.

At rehearing, the authorized representative now presents a filing form that was alleged to have been included in the packet which was signed by [REDACTED] on [REDACTED], [REDACTED] and asks this Administrative Law Judge to determine that the department failed to find the form in the original packet rather than finding that [REDACTED] made a clerical error and failed to put the filing form into the original packet. [REDACTED] was unavailable to testify as to what she might have done on [REDACTED]. Therefore, the newly submitted document is hearsay and inadmissible. There is no way to tell when the document was created or signed. No one from [REDACTED] was present at the hearing to testify from personal knowledge about when the document was created or submitted to the department. The department representative would have had no reason to exclude the filing form which was referenced in a cover letter when attempting to process the original documents filed by [REDACTED]. The claimant or the claimant's representative has the responsibility to make certain all pertinent documents and information is contained in an application package. [REDACTED] had ample time to submit a completed DHS-1171 on claimant's behalf and failed to do so until [REDACTED].

The Department properly processed the Claimant's [REDACTED] MA application. A cover letter is not sufficient to preserve an application date. Policy requires that an Application for Assistance or filing form be submitted to preserve an application date. BAM 110. The required filing form is available as part of the DHS-1171. The Authorized Representative failed to file the required filing form or application until [REDACTED].

