

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-28279
Issue Nos.: 2001, 4003
Case No.: [REDACTED]
Hearing Date: May 16, 2011
DHS County: Wayne (82-49)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on May 16, 2010. Claimant appeared and testified at the hearing. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS followed its policies and procedures in terminating Claimant's Medical Assistance-Adult Medical Program (MA-AMP) 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. On January 1, 2010, DHS awarded Claimant AMP and SDA benefits.
2. In about December 2010, DHS initiated an annual review of Claimant's benefits and requested that Claimant submit current medical information.
3. Claimant's primary physician and his psychiatrist both failed to complete the DHS medical report forms.
4. On January 8 and January 29, 2011, DHS granted extensions of time to Claimant to obtain cooperation from his treating physicians.

5. On March 15, 2011, DHS issued a Notice of Case Action terminating Claimant's AMP and SDA benefits effective April 1, 2011.
6. On March 25, 2011, Claimant filed a Hearing Request with DHS.

CONCLUSIONS OF LAW

MA was established by Title XIX of the United States Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. DHS administers MA 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 Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

AMP was established by Title XXI of the Social Security Act, Sec. (1115)(a)(1), and is administered by DHS pursuant to MCL 400.10 *et seq.* DHS' policies are contained in BAM, BEM and RFT. *Id.*

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

The DHS manuals are the policies and procedures DHS officially created for its own use. 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.

In this case, DHS terminated Claimant from AMP and SDA because he failed to produce verification of his medical condition. I must determine whether the termination of Claimant's benefits was in accordance with DHS policies and procedures.

BAM 815, "Medical Determination and Obtaining Medical Evidence," is the DHS procedure for developing medical evidence for DHS cases. BAM 815 addresses the situation where a client cannot obtain medical evidence from his medical providers.

First, DHS must have the client execute a medical release form:

Complete an (sic) DHS-1555, Authorization to Release Protected Health Information, to request existing medical records if the client has:

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- Seen a physician within the last six months.
- Gone to a clinic within the past six months.
- Been hospitalized within the past 12 months.

BAM 815, p. 3.

Second, BAM 815 provides a procedure when the client's treating physicians are unavailable:

If the client has no current medical sources, schedule a general medical examination and authorize payment (93A). If needed, authorize payment for transportation to the examination.... **Psychiatric, psychological and psychometric examinations require prior approval by the MRT [Medical Review Team].**

...

Exception: No prior authorization is required for any reason when an (sic) State Office of Administrative Hearings and Rules (SOAHR) administrative law judge has ordered payment for the medical report or procedure. *Id.*, pp. 4, 7 (boldface in original).

Third, DHS is required to assist in scheduling the medical appointment:

Scheduling

Make all arrangements on behalf of the client for a medical exam or other diagnostic tests requested by the MRT or SSI advocate.... Use the DHS-800, Medical Appointment Confirmation, to notify the client of a scheduled appointment. The DHS-800 tells the client:

- The department will **not** pay for a missed appointment.
- To call the physician, in advance, to reschedule if the client is unable to keep the appointment.
- To call his specialist if assistance is needed in rescheduling the appointment.

Id., p. 8 (boldface in original).

Fourth, there is also a procedure for authorizing transportation, in BAM 825 – “Medical Transportation:”

You must furnish information in writing and orally, as appropriate, to all applicants and to all other individuals who request it acknowledging that medical transportation is **ensured** for transportation to and from medical services providers for MA-covered services.... Payment for medical transportation may be authorized only after it has been determined that it is not otherwise available, and then for the least expensive available means suitable to the client's needs.

Medical transportation is not available to the following, unless it is to obtain medical evidence; see BAM 815:

- SDA applicants/recipients.

...

AMP applicants/recipients (BEM 640).

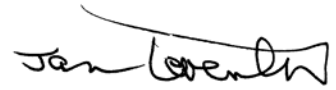
BAM 825, p. 1 (boldface in original).

I find and determine that none of the procedures in BAM 815 and BAM 825 were followed in this case, and DHS' termination of Claimant's benefits was illegally conducted. I find and determine that DHS did nothing to assist Claimant after his physicians failed to respond to his request for information. I REVERSE the DHS action in this case and order that Claimant's AMP and SDA benefits shall be reinstated and his annual review shall be reprocessed. Claimant's annual review shall include an appropriate medical examination and report at DHS' expense pursuant to BAM 815.

In conclusion, based on the above findings of fact and conclusions of law, I conclude and determine that DHS erred in terminating Claimant's AMP and SDA benefits. I find and decide that DHS acted incorrectly and is REVERSED. DHS is ORDERED to reinstate and reprocess Claimant's AMP and SDA benefits.

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 AMP and SDA benefits and his annual review, including providing an appointment for a DHS-paid medical examination and report and accompanying transportation expenses. All steps shall be taken in accordance with DHS policies and procedures.



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

Date Signed: May 17, 2011

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Date Mailed: May 18, 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:

