

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20119167
Issue No: [REDACTED]
Case No: [REDACTED]
Hearing Date:
April 6, 2011
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9; and MCL 400.37; upon Claimant's request for a hearing filed on December 1, 2010. After due notice, a telephone hearing was held April 6, 2011. Claimant personally appeared and provided testimony.

ISSUE

Did the department properly close Claimant's Medical Assistance (MA) and Medicare Savings Program for failure to return the required verifications?

FINDINGS OF FACT

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

1. On September 14, 2010, the department mailed Claimant a Redetermination packet with a due date of October 1, 2010. (Department Exhibits 1-4).
2. On November 19, 2010, the department mailed Claimant a Notice of Case Action, informing him that his Medicare Savings Program and Medicaid Program (MA), would be closed beginning December 1, 2010, because he failed to return the redetermination form mailed to him and/or failed to provide the required proofs. (Department Exhibits 5-9).
3. On November 29, 2010, the department was contacted by Claimant's support coordinator from Community Mental Health in Midland, who was Claimant's authorized representative at the hearing, asking what she could do to assist Claimant in keeping his Medicaid benefits open because they had just received the Notice of Case Action showing his Medicaid programs were closing on

December 1, 2010, and they had never received the Redetermination packet. (Department Exhibit 12).

4. On November 30, 2010, Claimant's authorized representative asked the department if they completed the Redetermination booklet and brought it in that day, could the department reinstate his Medicaid benefits. The department explained that the case was already closed, and that Claimant had medical coverage through November 30, 2010, because the system does not close the Medicaid program in the middle of the month, and Claimant's authorized representative would have to reapply for Medicaid because there was no way to keep Claimant's Medicaid programs open. (Department Exhibits 14-15).
5. Claimant submitted a hearing request on December 1, 2010, protesting the closure of his Medicaid programs. (Request for a Hearing).

CONCLUSIONS OF LAW

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) and the Bridges Reference Manual (BRM). Department policy states:

Department policy states that Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. Clients must take actions within their ability to obtain verifications. BAM 105.

DHS staff must assist when necessary. The local office must assist Clients who ask for help in completing forms or gathering verifications. Particular sensitivity must be shown to Clients who are illiterate, disabled or not fluent in English. BAM 105.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. The department must tell the Client what verification is required, how to obtain it, and the due date. The Verification Checklist (DHS-3503) or for MA redeterminations, the MA Determination Notice (DHS-1175), is mailed to the Client to request verifications. The Client must obtain the required verifications, but the department must assist if Clients need and request help. BAM 130.

The Client is allowed 10 calendar days to provide the verifications requested by the department. If the Client cannot provide the verification despite a reasonable effort, the department may extend the time limit at least once. The department sends a negative action notice to the Client when the Client indicates refusal to provide a verification, or the time period given has elapsed and the Client has not made a reasonable effort to provide it. BAM 130.

The department's Bridges computer system generates a redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. Bridges sends a Continuing Your Food Assistance Benefits (DHS-2063B), to FAP clients for whom FIP, SDA, MA, AMP, and/or TMAP are not active. The packet is sent to the mailing address in Bridges. The packet is sent to the physical address when there is no mailing

address. The packet includes the following as determined by the type of assistance to be redetermined:

- Redetermination/review form indicated above.
- Notice of review as determined by policy.
- Interview date.
- Interview type.
- Place and time.
- Required verifications.
- Due date.
- Return envelope. BAM 210.

Interview requirements are determined by the type of assistance that is being redetermined. For the MA, AMP and TMP programs, in-person interviews are not required as a condition of eligibility. BAM 210.

In this case, Claimant failed to return his Redetermination packet. Claimant is required to comply with the department in providing the verification materials necessary to allow the department to determine initial or ongoing eligibility. BAM 105. Departmental policy indicates that failure to provide proof of eligibility will result in penalties. BAM 105; BAM 130. Because Claimant failed to return his redetermination packet, the department could not determine Claimant's continued eligibility for the Medicare savings program and Medicaid (MA).

Claimant's authorized representative and his home health care provider credibly testified that Claimant never received the Redetermination packet. The department did not have any information in Claimant's file indicating that the Redetermination packet was returned as undeliverable. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Based on their credible testimony, this Administrative Law Judge finds Claimant did not receive the packet.

Claimant's authorized representative testified that when Claimant received the Notice of Case Action she immediately notified the department on November 29, 2010, that Claimant had not received the Redetermination packet and asked what could be done to keep his Medicare Savings Program and Medicaid (MA) program from closing. Claimant's authorized representative asked for assistance multiple times during the exchange of emails with the department on November 29 and November 30, 2010 on how to prevent the closure of Claimant's MA programs. Each time the department told Claimant's authorized representative that there was nothing to be done, the programs were closed and Claimant would have to reapply. On November 30, 2010, Claimant's authorized representative specifically asked if they completed the Redetermination packet that day and submitted it, could Claimant's MA programs remain open. The department again said, no, Claimant would have to reapply.

During the hearing, the department was asked that if Claimant's MA programs did not close until December 1, 2010, according to the Notice of Case Action dated November 19, 2010, why did they tell Claimant's authorized representative that submission of the Redetermination packet on November 30, 2010 would not keep Claimant's MA programs open. The department representative explained that it was an issue they had constant problems with, but that the date the Notice of Case Action was mailed was actually the date the programs closed, that being November 19, 2010, despite the December 1, 2010 close date, because their computer program does not close programs in the middle of the month. When asked for clarification, the

department representative again stated that both Claimants' MA programs closed on the date the Notice of Case Action was mailed out, November 19, 2010, and cited BAM 220 in support of his statement.

According to BAM 220, timely notice is given for a **negative action**, unless policy specifies adequate notice or no notice. Adequate notice takes effect the date the notice is mailed and is given to clients when an application is approved or denied, or when clients receive an increase in benefits. This Administrative Law Judge finds that closure of Claimant's MA programs was a negative action, and therefore timely notice was required.

A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. BAM 220. In this case, the department mailed the Notice of Case Action on November 19, 2010, at least 11 days before the intended negative action was to take effect on December 1, 2010, according to their own notice and policies. When Claimant's authorized representative received the Notice of Case Action, she reacted by contacting the department and asking for assistance in trying to keep Claimant's MA programs from closing, which is what is intended by pending the negative case action at least 11 days.

At this point the department had two options. Despite the department's testimony and emails to the contrary, Claimant's MA programs were still open on November 29 and November 30, 2010. Had the department allowed Claimant's authorized representative to complete and submit the Redetermination packet on November 30, 2010, the department would have had to delete the negative action in accord with departmental policy BAM 220 and reactivate and reinstate Claimant's MA benefits.

The department representative would have entered the information from the Redetermination packet the client provided to meet the requirement that caused the negative action, using the appropriate Bridges screens, then followed the additional steps to delete a negative action. The steps include reactivating the programs on the program request screen in Bridges and running eligibility and certifying the results, something the department repeatedly said could not be done. BAM 220.

In addition, the department could also have instructed Claimant's authorized representative that if the Request for a Hearing was timely filed on the due date of November 30, 2010, he would have continued to receive his MA assistance or have it reinstated, pending the hearing. The department did neither. While the Client must obtain the required verifications, the department must assist if Clients need and request help. BAM 130. Here, Claimant's authorized representative repeatedly asked for help in writing and was not only denied that help, but was given misinformation.

Based on the department's misinformation and failure to follow their own policies, the Administrative Law Judge cannot uphold the department's denial of MA for lack of verification. The department admitted that Claimant had attempted to submit all the requested verification on November 29 and November 30, 2010, while the case was still open and pended per policy for that very reason. Therefore, because the department failed to follow departmental policies in refusing to allow Claimant's authorized representative to submit the Redetermination packet, the department improperly closed Claimant's MA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly closed Claimant's Medicare Savings Program and Medicaid cases.

Accordingly, the department's actions are **REVERSED**. Further, it is ORDERED that the department shall immediately reinstate Claimant's Medicare Savings Program and Medicaid benefits back to the close date of December 1, 2010, and issue supplemental benefits to which he is otherwise entitled.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 8, 2011

Date Mailed: April 12, 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 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.

VLA 

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