

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

IN THE MATTER OF:



Reg. No.: 201270058
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: October 18, 2012
County: Washtenaw DHS (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on October 18, 2012 from Ypsilanti, Michigan. Participants included the above named claimant; [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of Department of Human Services (DHS) included [REDACTED], Supervisor, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) benefits due to an alleged failure to required medical verifications.

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 10/6/11, Claimant applied for MA benefits.
2. Claimant's application had an authorized representative (AR).
3. On 12/15/11, DHS sent unspecified documents to the Medical Review Team (MRT) so that a determination of Claimant's disability would be made.
4. On 2/13/12, MRT returned the case to Claimant's specialist requesting the completion of a DHS-49D (Psychiatric Examination Report) and DHS-49E (Mental Residual Functional Capacity Assessment).

5. On 2/24/12, DHS mailed Claimant and the AR a Verification Checklist (VCL) requesting the submission of a DHS-49D and DHS-49E.
6. The VCL gave a 3/5/12 due date to return the DHS-49D and DHS-49E.
7. The DHS-49D and DHS-49E were not returned to DHS.
8. On 5/10/12, DHS denied Claimant's application due to an alleged failure by Claimant to submit sufficient medical documentation.
9. On 8/3/12, Claimant's AR requested a hearing to dispute the denial of MA benefits.

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). DHS 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 Reference Tables Manual (RFT).

The present case concerned an application of MA benefits based on disability. It was not disputed that Claimant's disability was not verified by Social Security Administration. Thus, a disability analysis was required by DHS before MA benefits could be approved. DHS initially alleged that Claimant failed to complete and return a DHS-49G (Activities of Daily Living). DHS subsequently conceded that Claimant timely returned the form. Despite the concession, DHS contended that Claimant's application requesting MA benefits was properly denied due to Claimant's failure to return a completed DHS-49D and/or DHS-49E.

A client not eligible for RSDI based on disability or blindness must provide evidence of his disability or blindness. BEM 260 (10/2011), p. 3. DHS specialists are directed to do all of the following to make a referral to the Medical Review Team (MRT) (see *Id.*):

- obtain evidence of the impairment (such as a DHS-49, DHS-49-D or equivalent medical evidence/documentation);
- complete an DHS-49-B, Social Summary;
- obtain an DHS-49-F, Medical-Social Questionnaire, completed by the client; and
- obtain optional form DHS-49-G, Activities of Daily Living, completed by the client.

DHS is then to forward the medical evidence, DHS-49-B, DHS-49-F and DHS-49-G (optional) to the MRT. *Id.* It is also noted that the specialist must follow the procedures listed in BAM 815 in processing the medical determination.

DHS essentially contended that the above cited client responsibility to provide evidence of disability justified the application denial after DHS requested the completion of medical forms from Claimant via DHS-3503-MRT and the forms were not returned. Such a contention might be correct if the application denial was based on a finding that Claimant was not disabled because the submitted medical evidence did not support a finding of disability. DHS made no disability determination in the present case because DHS denied Claimant's application for an alleged procedural failure. As noted above,

disability application procedures are found in BAM 815. Thus, DHS cannot justify an application denial based on an alleged procedural failure not required by BAM 815.

BAM 815 identifies 26 steps and the party responsible for each step. The only listed client obligations are: claiming a disability (step 1), completing a Medical Social Questionnaire (step 6) and signing an Authorization to Release Protected Health Information (step 9). DHS did not allege that Claimant failed to meet any of these procedural requirements; this strongly suggests that Claimant could not have failed to meet her procedural obligations in the processing of a disability benefit application.

DHS noted that Claimant was given a DHS-3503-MRT, requesting the completion of two medical forms. Step 13 of the process asks specialists to complete a DHS-3503-MRT, Medical Review Verification Checklist, indicating the type of verification requested. *Id.*, p. 5. Step 14 states that specialists are to give the client the DHS-3503-MRT, DHS-1555 and/or the examination report(s) to be completed by the health care provider. *Id.* These steps suggest that perhaps the burden rests with clients to have these forms completed.

DHS assumed that an obligation is created for a client to return medical forms because disability procedures state that a specialist is to give the client a DHS-3503-MRT. If DHS intended such a consequence, the procedures would have specifically directed specialists to deny applications if a client failed to return medical forms. Despite 26 different steps in the disability procedures, nowhere do DHS regulations identify a client's obligation to return forms requested via DHS-3503-MRT. If anything, the listed procedures appear to create a burden for DHS specialists if it is determined that medical evidence is lacking. Step 9 of the procedures state that specialists are to complete a DHS-1555, Authorization to Release Protected Health Information, to request existing medical records if the client has seen a physician within the last six months, gone to a clinic within the past six months or been hospitalized within the past 12 months. BAM 815 (10/2011), p. 3. Step 10 elaborates that if the client has no current medical sources, DHS is to schedule a general medical examination and authorize payment (93A). *Id.*, p. 4.

DHS is to use the DHS-3503, Verification Checklist to request verification. BAM 130 (5-2012), p. 3. DHS must give clients at least ten days to submit verifications. *Id.* DHS must tell the client what verification is required, how to obtain it, and the due date. *Id.* at 2. For FAP benefits, DHS is to send a negative action notice 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. (*Id.*, p. 5.)

DHS repeatedly cited BAM 130 as a basis to support the application denial. BAM 130 refers to the DHS-3503, not the DHS-3503-MRT. These are completely separate forms. DHS cannot cite policy referring to a DHS-3503 to justify an application denial when a DHS-3503-MRT was used to request verification. Furthermore, BAM 130 does not apply to disability determinations. As noted above, BAM 815 details the procedures required of disability applications. DHS failed to cite how Claimant failed to meet any obligations

listed in BAM 815. Based on the presented evidence, it is found that Claimant had no procedural obligation to return a DHS-49D or DHS-49E.

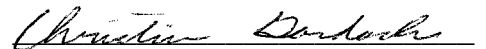
It was not disputed that the only basis for the denial of Claimant's MA benefit application was Claimant failure to return a DHS-49D and DHS-49E. Based on the finding that Claimant had no obligation to return the forms, the application denial is found to be improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 10/6/11 for MA benefits; and
- (2) process Claimant's application subject to the finding that DHS may not deny Claimant's application for a failure to return a DHS-49D and/or DHS-49E.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 10/26/2012

Date Mailed: 10/26/2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:

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- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

