

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-49445
2012-48187
Issue No.: 2000
Case No.: [REDACTED]
Hearing Date: August 23, 2012
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon L [REDACTED] request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Thursday, August 23, 2012. The Claimant is deceased. [REDACTED] the decedent's Guardian, appeared. Participating on behalf of the Department of Human Services ("Department") was [REDACTED] and [REDACTED].

ISSUE

Whether the Claimant/decedent's Guardian has proper authorization to continue representation of the Claimant/decedent in this case?

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 March 14, 2012, the Department received an application for Medical Assistance ("MA") benefits on behalf of the Claimant.
2. On April 6, 2012, the Department received a written request for hearing on behalf of the Claimant from the Guardian.
3. On April 13, 2012, the Claimant passed away.
4. On April 17, 2012, the Department denied the MA application.

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5. The Department notified the Claimant/decedent and Guardian of the denial from which a second hearing request was received from the Guardian.
6. The Guardian has not applied with the Probate Court to seek continued representation.

CONCLUSIONS OF LAW

As a preliminary matter, there were two Request for Hearings filed on this case resulting in two registration numbers; 2012-48187 and 2012-49445. The first hearing request was received by the Department prior to the Claimant's passing and the second received after the Claimant's death; both were completed by the Guardian. This hearing addresses both hearing requests.

The Medical Assistance 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, formally known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Departmental policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("RFT").

A request for public assistance may be in person, by mail, telephone or through by an internet application. BAM 110, p. 1 (December 2011). Application for MA benefits may be made on behalf of a client by the spouse, parent, legal guardian, adult child, stepchild, specified relative, or any other person provided the person is at least age 18 or married. BAM 100, p. 8 (December 2011). If the 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. BAM 100, p. 8 (December 2011). The application form must be signed by the client or the individual acting as the Authorized Representative ("AR"). BAM 100, p. 8 (December 2011).

Any person, regardless of age, or his Authorized Representative ("AR"), may apply for assistance. BAM 110, p. 4 (December 2011). An AR is a person who applies for assistance on behalf of the client and/or otherwise acts of his behalf. BAM 110, p. 7 (December 2011). For MA purposes, an AR must be an adult child or stepchild; a specified relative; designated in writing by the client; court appointed; or a representative of an institution (such as jail or prison) where the client is in custody. BAM 110, p. 9 (December 2011).

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An AR is **not** the same as an authorized hearings representative (“AHR”). BAM 110, p. 8 (December 2011). An AHR is defined by Bridges Policy Glossary (“BPG”) as the “person who stands in or represents the client in the hearing process **and** has the legal right to do so.” BPG p. 4 (July 2011). This right is derived from the following sources:

- (a) written authorization, signed by the client, giving the person the authority to act for the client in the hearing process;
- (b) court appointment as a guardian or conservator;
- (c) the representative’s status as legal parent of a minor child;
- (d) the representative’s status as attorney at law for the client; or
- (e) for MA only, the representative’s status as the client’s spouse, or the deceased client’s widow or widower, only when no one else has the authority to represent the client’s interest in the hearing process.

BPG, p.4 (July 2011). An authorization to represent is a form of Power of Attorney. BAM 110, p. 10 (December 2011). When a person who gave authorization dies, the Power of Attorney ends. BEM 110, p. 10 (December 2011); MCL 700.5510(1)(a). After death, the person does not exist as a legal entity, so no one can represent the person. BEM 110, p. 10 (December 2011). An estate may be created to handle remaining business and financial issues that were outstanding at the time of death. BEM 110, p. 10 (December 2011). Only a Probate Court can create a decedent’s estate. BEM 110, p. 10 (December 2011); MCL 700.1302.

In this case, the Claimant passed away on April 13, 2012 and, as such, the Guardianship that was established while the Claimant was alive also ceased. Since then, the Guardian, or other individual/entity, has not petitioned the Probate Court for special authorization to represent the decedent. Similarly, after death of the Claimant, the Guardian, who had no legal authority to do so, submitted a second hearing request. As discussed above, once an individual passes, the Probate Court must be petitioned in order to represent a decedent. In this case, that was not done. In light of the foregoing, the Claimant’s previous Guardian lacks legal standing to act on behalf of the decedent. During the hearing, it was explained to the decedent’s previous Guardian that she lacks authority to act on behalf of the decedent and what was required to move forward. The decedent’s previous Guardian opted to abandon the hearing request when she removed herself from the proceedings. In light of the foregoing, the Requests for Hearing are DISMISSED.

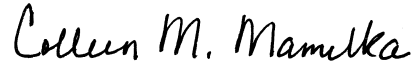
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the decedent’s previous Guardian lacks the legal authority to act on behalf of the decedent.

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Accordingly, it is ORDERED:

The April and May 2012 Requests for Hearing are DISMISSED.



Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: September 7, 2012

Date Mailed: September 7, 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:
 - 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

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cc: [REDACTED]
Wayne County DHS (82)

C. [REDACTED]
Mamelka