

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

IN THE MATTER OF:



Reg. No.: 201324588
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: June 6, 2013
County: Genesee (06)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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, a three-way telephone hearing was held on June 6, 2013. Participants on behalf of Claimant included [REDACTED] ([REDACTED]). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (Eligibility Specialist/MARA Worker).

ISSUES

- i. Does the Administrative Law Judge have jurisdiction to hear Claimant's request for hearing under Michigan Administrative Code (MAC) 400.904?
- ii. Did the Department properly deny Claimant's application for Medical Assistance based on disability (MA-P) and Retroactive MA-P for failure to return requested 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. Claimant's AR submitted an application for MA-P and Retro-MA-P on May 30, 2012.
2. The Department mailed Claimant (and Claimant's AR) a verification checklist on June 13, 2012, which carried a due date of June 25, 2012.
3. On September 26, 2012, the Department mailed Claimant and Claimant's AR a Notice of Case Action (DHS-1605), which denied the MA-P and Retro MA-P application effective March 1, 2012 due to failure to provide verifications.

4. The Department received a request for hearing from Claimant's AR on December 26, 2012.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

There are two issues present in this matter. Both issues will be addressed separately. The first question concerns whether the Administrative Law Judge has jurisdiction to hear Claimant's request for hearing based on the 90 day rule.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903 provides in relevant part:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because a claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance. [R 400.903(1).]

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Bridges Administrative Manual (BAM) 600, p. 4, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing. **The request must be received anywhere in DHS within the 90 days.*** [Emphasis added.]

In the present case, the Department sent Claimant (and Claimant's Authorized Representative (AR)) a Notice of Case Action (DHS-1605) advising Claimant of its decision to deny Claimant's application for MA-P benefits. The Department's Notice of Case Action (DHS-1605) to Claimant (and Claimant's AR) was dated September 26, 2012. Claimant's request for hearing was stamped as received on December 26, 2012 by "Ingham County DHS Administrative Support." A second stamp appears on the request for hearing dated January 3, 2013 as received by "District 25/26 Mailroom." Per BAM 600 cited above, the request must be received anywhere in DHS within the 90 days. The 90th day was December 25, 2012 (Christmas Day); however, because the due date cannot end on a holiday, the following day (December 26, 2012) is the deadline. Here, there is no dispute that "the Department" received Claimant's request for hearing on December 26, 2012, which was the 90th day following the Notice of Case Action. Accordingly, this Administrative Law Judge has jurisdiction to hear this matter.

The second issue concerns whether the Department properly denied Claimant's application for MA-P and Retro-MA-P due to failure to timely return requested verifications.

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130. Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. BAM 130. Verifications are considered timely if received by the date they are due. BAM 130.

For MA, the client has 10 days to provide requested verifications (unless policy states otherwise). BAM 130. If the client cannot provide the verification despite a reasonable effort, the department worker **may** extend the time limit up to three times. BAM 130. Should the client indicate a refusal to provide a verification or, conversely, if the time period given has elapsed and the client has not made a reasonable effort to provide it, the department may send the client a negative action notice. BAM 130.

The Department sometimes will utilize a verification checklist (VCL) or a DHS form telling clients what is needed to determine or redetermine eligibility. See Bridges Program Glossary (BPG) at page 47. The department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130.

Generally speaking, the client is obligated to obtain required verification, but the department worker must assist if the client needs and requests help. BAM 130. If neither the client nor the department worker can obtain verification despite a reasonable effort, the department worker must use the best available information. BAM 130. If no evidence is available, the department worker should use his or her best judgment. BAM 130. Exception: Alien information, blindness, disability, incapacity, incapability to declare one's residence and, for FIP only, pregnancy must be verified. BAM 130.

For all programs, the department must, before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130.

To verify information, the department uses documents, collateral contacts or home calls to verify information. BAM 130. A "document" is a written form of verification. BAM 130. It may include a photocopy, facsimile or email copy if the source is identifiable. BAM 130. A "collateral contact" is a direct contact with a person, organization or agency to verify information from the client. BAM 130. It might be necessary when documentation is not available or when available evidence needs clarification. BAM 130. The client

must name suitable collateral contacts when requested. BAM 130. The department worker may assist the client to designate them. BAM 130. The department worker is responsible for obtaining the verification. BAM 130.

Here, Claimant sought MA-P and Retro MA-P benefits back to March 2012. The Department then forwarded a verification checklist which sought verification of Claimant's Social Security Administration (SSA) payments which were received via direct deposit into a checking account. Specifically, the Department requested proof of the account balances for the months requested.

On June 25, 2012, Claimant's AR faxed a letter to the Department which attached some medical records, but indicated that the AR was "waiting on bank verifications for social security deposit . . ." The AR believed that Claimant received a debit card for his social security deposits, but did not receive any bank statements for the direct deposit funds. Claimant's AR, in this letter, also indicated that they were unaware of a bank and asked the Department to provide them with a bank name. The record did not contain any correspondence from the Department that was responsive to the AR's June 25, 2012 letter.

Claimant's AR, on July 3, 2012, faxed another letter to the Department which requested an extension of time to obtain the verifications. The AR suggested the new due date be extended to July 15, 2012. The AR then indicated, "I am waiting on bank verification for social security deposit." The letter further indicated that the AR sent Claimant a letter "advising him to obtain the bank verification of direct deposit through the www.myaccount.chase.com website." The AR indicates in this letter that all information will be forwarded to the Department as soon as it is received. There was nothing in the record that indicated whether the Department responded to the AR's July 3, 2012 letter.

On July 13, 2012, Claimant's AR faxed a letter to the Department requesting another extension of time until July 25, 2012. In this letter, the AR indicates that the AR was still waiting for bank verification for social security. In the letter the AR notes that they forwarded a letter to Claimant requesting the verification information and even called him. Again, the record does not contain a response from the Department.

Claimant's AR forwarded another letter to the Department on July 25, 2012 which requested assistance and/or a short extension until July 30, 2012 to obtain the verifications. In the letter, the AR reported they were continuing to attempt to obtain the bank verification for Claimant's social security direct deposits. The letter provides that neither Claimant nor Claimant's daughter own a computer but they may visit the local library to access the website to obtain the requested verification. The AR also requests the Department forward the information to the Medical Review Team (MRT). The record does not indicate whether the Department granted the request for extension or otherwise responded to this letter.

On August 9, 2012, Claimant's AR faxed the Department a letter requesting the Department call a "1-866" phone number to obtain the balance of Claimant's account

and to use that as the best available information. The letter also provides that Claimant's daughter had made several unsuccessful attempts to obtain the information using the above telephone number but she was unable to reach a person. The letter further provides, "Since this is not an actual bank account there are no bank statements and can only verify the balances via this phone number." [sic] The AR believed that the checklist was complete as of that date and another extension was requested. The AR then cites BAM 130 and requests assistance and/or that the Department should "use the best available information to make a determination." Again, there was no record to show whether the Department directly responded to this letter. The Department mailed the notice denying the application on September 26, 2012.

Here, the Department argues that it properly denied Claimant's MA-P application due to failure to comply with the verification requirements. Claimant's AR, on the other hand, contends that despite their best efforts, they were unable to provide the requested bank statements as Claimant did not have an actual bank account. Claimant's AR further contends that there were no "statements" available and the only way to obtain the information was through the 1-866 telephone number provided. According to Claimant, the Department should not have denied the application, but should have used the Claimant's statement in the assistance application or should have called the 1-866 phone number to verify the account balance as the best available information.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and all the evidence in the record. Although the record did not show whether the Department specifically responded to the AR's requests, this Administrative Law Judge considers the failure to deny the application at an earlier date to be evidence of continued extensions. Of course, the Department was not required to grant extensions into perpetuity. This Administrative Law Judge finds that the weight of the evidence is in the Department's favor. Claimant's position, propounded by his AR during the hearing, that there are no actual documents or statements to show where Claimant's SSA direct deposits are sent, is not credible. Claimant's AR cannot comply with the department's verification request for account information by asking the Department to simply call a 1-866 telephone number. Had the Department used the number provided and contacted the institution (in this case ██████ bank), the bank would not have provided private information about Claimant's account without authorization. In addition, the bank would have required verifying information such as full name, date of birth, account number and possibly a protected password. This information is generally considered private and the

bank would not freely provide this information to the Department. Certainly, Claimant's AR had better access to this information than the Department. The Department is certainly entitled to know where Claimant's SSA direct deposit payments are being held prior to determining Claimant's eligibility for MA-P and Retro MA-P. This Administrative Law Judge is not convinced that there are no documents or records that show Claimant's SSA direct deposit payments. The best available information for the Department would be Claimant's records from Chase.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department properly denied Claimant's application.

DECISION AND ORDER

This Administrative Law Judge has proper jurisdiction to hear this matter because Claimant's request for hearing was timely.

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department properly denied Claimant's MA-P and Retro MA-P application due to failure to timely and properly provide requested verifications.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 12, 2013

Date Mailed: June 12, 2013

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.

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.

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