

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201333772
Issue No: 2006, 2011
Case No: [REDACTED]
Hearing Date: August 21, 2013
Montcalm County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request for a hearing submitted by L & S Associates to the Department of Human Services (department) on February 21, 2013. After due notice, a telephone hearing was held on August 21, 2013. [REDACTED], a representative with [REDACTED], appeared by three-way conference call and provided testimony on behalf of the Claimant's estate. The department was represented by [REDACTED], an eligibility specialist, and [REDACTED], a manager, both with the department's Montcalm County office.

ISSUE

Whether the department properly denied the July 12, 2012 application for retroactive Medical Assistance (MA) benefits submitted by [REDACTED] on behalf of Claimant's estate?

FINDINGS OF FACT

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

1. Claimant died on September 17, 2011.
2. On December 29, 2011, [REDACTED], a patient advocate with [REDACTED] submitted a Filing Form with the department, seeking retroactive MA benefits for Claimant for the month of September 2011. The Filing Form was not signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal representative and did not include any of the following: an Authorization for Release of Information signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal

representative; an Authorization to Represent signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal representative; or Letters of Authority for Personal Representative appointing [REDACTED] as personal representative of Claimant's estate. (Claimant Exhibit A)

3. On July 12, 2012, [REDACTED] submitted an assistance application (DHS-1171) and Retroactive Medicaid Application (DHS-3243), seeking retroactive medical assistance coverage for Claimant for the month of September 2011. The application was signed by [REDACTED], patient advocate with [REDACTED]. The application was not signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal representative. Along with the application, [REDACTED] submitted the following documents:

- (i) Letters of Authority for Personal Representative, indicating that, on July 6, 2012, attorney [REDACTED], [REDACTED] had been appointed and qualified by Montcalm County Probate Court as personal representative of the estate of [REDACTED] and was authorized to perform all acts authorized by law except that he had no authority over the estate's real estate or ownership interests in a business entity that he identified on his acceptance of appointment.
- (ii) Authorization for Release of Information signed on July 6, 2012 by [REDACTED], personal representative for the estate of [REDACTED] and authorizing the release of all information concerning [REDACTED] to [REDACTED].
- (iii) Authorization to Represent, signed on July 6, 2012 by [REDACTED] personal representative for the estate of [REDACTED] and authorizing [REDACTED] to act as authorized representative in all proceedings necessary to establish eligibility for Medicaid.

4. On October 19, 2012, the department mailed Claimant's family member, [REDACTED], an Application Notice (DHS-1150), advising that the application for retroactive MA benefits had been denied for the following reasons:

- Filing form dated and received 12/29/11 signed by [REDACTED]. No release was included and the client was already deceased, therefore it couldn't be addressed. BAM 110, pp. 4, 9, 10.
- Application submitted on 7/12/12 by [REDACTED] was not signed by the deceased or a family member. BAM 110, p. 4. At time of application, [REDACTED] was not authorized to represent the deceased because that authorization ends at time of client's death. BAM 110, pp. 9-10.

- A person is not eligible after the month of death. BAM 110, p. 3.
 - Retroactive Medicaid Application dated 7/12/12 denied for retro months of 6/11, 7/11, and 8/11 as application was not signed by client or authorized representative. BAM 110, pp. 4, 8- 10. Person applying is unclear as to client's relationship and was not submitted timely.
 - Failure to provide the department with information needed to determine eligibility. BAM 130.
5. On February 19, 2013, the department received a hearing request submitted by [REDACTED] protesting the department's denial of the December 29, 2011 Filing Form and July 12, 2012 application, seeking retroactive MA benefits for Claimant for the month of September 2011. (Request for Hearing Packet; Department Exhibit 1)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

A request for hearing shall be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code R 400.904(1). The following people have authority to exercise this right by signing a hearing request: (i) an adult member of the eligible group; or (ii) the client's authorized hearing representative. BAM 600, p 1.

The appointment of an authorized hearing representative must be made in writing. BAM 600, p. 2. An authorized hearing representative must be authorized or have made application through probate court before signing a hearing request for the client. BAM 600, p. 2. The authorized hearing representative's prior authorization must be verified unless the authorized hearing representative is the client's attorney at law, parent or, for MA only, spouse. BAM 600, p. 2. The Michigan Administrative Hearing System will deny a hearing request when the required verification is not submitted. BAM 600, p. 2. The following documents are acceptable verification sources: (i) probate court order or court-issued letters of authority naming the person as guardian or conservator; (ii) probate court documentation verifying that the person has applied for guardian or conservatorship; (iii) authorization signed by the client authorizing this person to represent the client in the hearing process; or (iv) birth or marriage certificate naming the person as parent or spouse. BAM 600, p. 2.

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the BAM, the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

An application for MA benefits may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, specified relative or any other person provided the person is at least age 18 or married. BAM 110, p. 8. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or specified relative, the person must have authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian. BAM 110, p. 8. An authorized representative must be one of the following: 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.

Department policy further provides that an application for MA benefits may be made for a deceased person. BAM 110, p. 3. However, because an authorization to represent is a form of a power of attorney, when a person who gave the authorization dies, the power of attorney ends. BAM 110, p. 9. After death, the person does not exist as a legal entity, so no one can represent the person. An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. BAM 110, p. 10. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a representative of the estate. BAM 110, p. 10.

Department policy further provides that retroactive MA coverage is available back to the first day of the third calendar month prior to the current application for MA benefits. BAM 115.

Section 1302 of the Estates and Protected Individuals Code (Code), 1998 PA 386, MCL 700.1302, provides that the Michigan probate court retains sole exclusive jurisdiction over decedents' estates. MCL 700.1302. Accordingly, only a probate court can create a decedent's estate and appoint a personal representative, special fiduciary or temporary personal representative to act on behalf of the estate. Indeed, Section 3715 of the Code governs the transactions authorized for personal representatives and provides that a personal representative, acting reasonably for the benefit of interested persons, may properly, among other things, effect a fair and reasonable compromise with a debtor or obligor. MCL 700.3715(q).

In this case, on December 29, 2011, over three months after the Claimant died on September 17, 2011, [REDACTED], a patient advocate with [REDACTED], submitted a Filing Form with the department, seeking retroactive MA benefits for Claimant for the month of September 2011. The Filing Form was not signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal representative and did not include any of the following: an Authorization for Release of Information signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild,

specified relative, or personal representative; an Authorization to Represent signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal representative; or Letters of Authority for Personal Representative appointing [REDACTED] as personal representative of Claimant's estate.

Thereafter, on July 12, 2012, [REDACTED] submitted an assistance application (DHS-1171) and Retroactive Medicaid Application (DHS-3243), seeking retroactive medical assistance coverage for Claimant for the month of September 2011. The application was signed by [REDACTED] patient advocate with [REDACTED]. The application was not signed by Claimant, a spouse, parent, legal guardian, adult child, stepchild, specified relative, or personal representative. Along with the application, [REDACTED] submitted the following documents:

- (i) Letters of Authority for Personal Representative, indicating that, on July 6, 2012, attorney [REDACTED], [REDACTED] had been appointed and qualified by Montcalm County Probate Court as personal representative of the estate of [REDACTED] and was authorized to perform all acts authorized by law except that he had no authority over the estate's real estate or ownership interests in a business entity that he identified on his acceptance of appointment.
- (ii) Authorization for Release of Information signed on July 6, 2012 by [REDACTED] personal representative for the estate of [REDACTED] and [REDACTED] authorizing the release of all information concerning [REDACTED] to [REDACTED].
- (iii) Authorization to Represent, signed on July 6, 2012 by [REDACTED] personal representative for the estate of [REDACTED] and [REDACTED] and authorizing [REDACTED] Inc. to act as authorized representative in all proceedings necessary to establish eligibility for Medicaid.

On October 19, 2012, the department mailed Claimant's family member, Aric Lewis, an Application Notice (DHS-1150), advising that the application for retroactive MA benefits had been denied for the following reasons:

- Filing form dated and received 12/29/11 signed by [REDACTED]. No release was included and the client was already deceased, therefore it couldn't be addressed. BAM 110, pp. 4, 9, 10.
- Application submitted on 7/12/12 by [REDACTED] was not signed by the deceased or a family member. BAM 110, p. 4. At time of application, [REDACTED] was not authorized to represent the deceased because that authorization ends at time of client's death. BAM 110, pp. 9-10.
- A person is not eligible after the month of death. BAM 110, p. 3.
- Retroactive Medicaid Application dated 7/12/12 denied for retro months of 6/11, 7/11, and 8/11 as application was not signed by client or authorized representative. BAM 110, pp. 4, 8-10. Person applying is uncle as to client's relationship and was not submitted timely.

- Failure to provide the department with information needed to determine eligibility. BAM 130.

On February 19, 2013, the department received a hearing request submitted by ██████████ protesting the department's denial of the December 29, 2011 Filing Form and July 12, 2012 application, seeking retroactive MA benefits for Claimant for the month of September 2011.

At the August 21, 2013 hearing in this matter, the department's representative, ██████████ asserted that ██████████ was without authority to submit the December 29, 2011 Filing Form seeking retroactive MA benefits for Claimant for the month of September 2011 because the Filing Form was not signed by Claimant, or by Claimant's spouse, parent, legal guardian, adult child, stepchild, or specified relative, or by an authorized representative designated in writing as such by Claimant, as is required by BAM 110. ██████████ further asserted that the Filing Form was submitted by ██████████ after Claimant had died on September 17, 2011 however ██████████ produced no court-ordered documentation authorizing ██████████ to act as the personal representative of Claimant's estate, as is also required by BAM 110.

██████████ further asserted that the July 12, 2012 assistance application and retroactive Medicaid application submitted by ██████████, seeking retroactive medical assistance coverage for Claimant for the month of September 2011, was untimely and was not signed by Claimant or an authorized representative and was therefore denied.

In response, ██████████, a representative with ██████████ conceded that the December 29, 2011 Filing Form was not signed by a family member, authorized representative or an individual designated as personal representative of Claimant's estate. ██████████ further argued, however, that the department's refusal to consider the December 29, 2011 Filing Form as a valid MA application was incorrect for the following reasons:

1. BAM 110 provides that "an application may be made for a deceased person" and, here, there was no relative or person available to make application on Claimant's behalf.
2. Section 435.907 of Title 42 of the Code of Federal Regulations provides that "the agency must require a written application from the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant."
3. Section 404.612 of Title 20 of the Code of Federal Regulations provides that "if it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not signing the application, we may accept an application signed by someone other than a person described in this section."
4. Section 400.25 of the Michigan Social Welfare Act, MCL 400.1, 1939 PA 280, provides that applications filed by a third party, "shall empower the county Department of Social Services ... to obtain all necessary 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). Moreover, 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).

This Administrative Law Judge has reviewed the relevant portion of page 3 of BAM 110, which provides that "an application may be made for a deceased person" and finds that this excerpt from BAM 110 must be read in concert with and not to the exclusion of other relevant provisions of BAM 110. Indeed, when read against the backdrop of pages 9 and 10 of BAM 110 which provide in relevant part that, after a person's death, only a court-appointed personal representative may handle remaining business and financial issues outstanding at the time of death, including unpaid medical expenses, it is clear that BAM 110 was not intended to allow just anyone to apply for MA benefits on behalf of a deceased person.

This Administrative Law Judge has also reviewed Section 435.907(a) of Title 42 of the Code of Federal Regulations, which provides that "the agency must require a written application from the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant." While Mr. Earley has argued that "incapacitated" should be defined to include death such that L & S Associates could be construed to have been "someone acting responsibly for the applicant" when it submitted the Filing Form on December 29, 2011, this Administrative Law Judge finds this argument to be an unreasonable and illogical interpretation of Section 435.907(a). To be sure, such an interpretation would ignore both state law and policy which provide that a decedent does not exist as a legal entity and therefore cannot have an authorized representative; rather, only a probate court can create a decedent's estate and appoint someone to act as a representative of the estate.

This Administrative Law Judge has also reviewed Section 404.612(g) of Title 20 of the Code of Federal Regulations, which provides that "if it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not signing the application, we may accept an application signed by someone other than a person described in this section." However, inasmuch as Section 404.601 provides that, "[t]his subpart contains the Social Security Administration's rules for filing a claim for old-age, disability, dependents', and survivors' insurance benefits as described in subpart D of part 404," this Administrative Law Judge finds these provisions to be wholly inapplicable to the instant proceedings involving a claim for *retroactive Medicaid coverage*.

Finally, this Administrative Law Judge has also reviewed Section 400.25 of the Social Welfare Act, which provides in relevant part:

An applicant for assistance or a third party acting responsibly in his behalf shall deliver his application in writing to the county department of social services in the manner and form prescribed by the state department ... and the applicant or third party shall empower the county department of

social services and the state department to obtain all necessary information concerning the recipient of social services for whom the application is made and his resources in order to determine the eligibility of the applicant.

While [REDACTED] has argued that this provision obligated the department to accept and process the Filing Form submitted on December 29, 2011 by [REDACTED] seeking retroactive MA benefits for the decedent Claimant for the month of September 2011, because the Filing Form was submitted by a "third party," this Administrative Law Judge finds this argument to be unreasonable and unsupported by state law and policy. Specifically, because a decedent does not exist as a legal entity and therefore cannot have an authorized representative, it likewise cannot be said that a decedent could have a "third party acting responsibly in his behalf."

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds, based on the competent, material, and substantial evidence presented during the August 21, 2013 hearing, [REDACTED] was without authority to submit a Filing Form on December 29, 2011, seeking retroactive MA benefits for Claimant for the month of September 2011, because [REDACTED] did not have court-appointed authority to act as the personal representative of Claimant's estate. This Administrative Law Judge further finds that while [REDACTED] ultimately obtained such authority on July 6, 2012, the assistance application and retroactive MA application subsequently submitted by [REDACTED] on July 12, 2012, seeking retroactive MA benefits for Claimant for the month of September 2011, was untimely as it was well outside the timeframe of coverage allowed by BAM 115. Consequently, this Administrative Law Judge finds that the department acted in accordance with policy when the department denied the July 12, 2012 application for retroactive MA benefits submitted by [REDACTED] on behalf of Claimant's estate.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy when the department denied the July 12, 2012 application for retroactive MA benefits submitted by [REDACTED] on behalf of Claimant's estate. Accordingly, the department's actions in this regard are **UPHELD**.

It is **SO ORDERED**.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 28, 2013

Date Mailed: August 29, 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 this 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 errors, or other obvious errors in the hearing decision that effect the substantial rights of 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 System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/hj

201333772/SDS

cc:



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 - Misapplication of manual policy or law in the hearing decision,
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SDS/aca

cc: