

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 13-000236-R
Issue No.: 2002
Case No.: [REDACTED]
Hearing Date: February 24, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 24, 2015, from Lansing, Michigan. Participants on behalf of the Claimant included attorneys [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistant Attorney General, [REDACTED]; Eligibility Specialist, [REDACTED] and Family Independence Manager, [REDACTED].

ISSUE

Did the Department properly deny the Claimant's Medical Assistance (MA) application for failure to submit the required verification?

PROCEDURAL HISTORY

This matter was originally scheduled for October 22, 2013. At that time, attorney [REDACTED] had withdrawn from representing the Claimant. The undersigned Administrative Law Judge issued an Order of Dismissal on October 24, 2013, as the Claimant, or anyone on her behalf, failed to appear for the hearing. On November 20, 2013, the Claimant's attorney filed a Motion for Rehearing or Reconsideration. On December 26, 2013, Supervising Administrative Law Judge [REDACTED] issued an Order Denying Request for Reconsideration/Rehearing. On November 7, 2014, Washtenaw County Circuit Court Judge [REDACTED] issued an Order for Remand. On December 3, 2014, Supervising Administrative Law Judge [REDACTED] issued a Scheduling Order, ordering the new hearing be scheduled. As such, a new hearing was scheduled for January 13, 2015. On December 31, 2014, the Michigan Administrative Hearing System received in the Claimant's attorneys request for an adjournment. The undersigned Administrative Law Judge did issue and Adjournment Order on January 5, 2015. The hearing was rescheduled for February 24, 2015, and commenced as rescheduled.

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 December 21, 2012, the Claimant submitted an application for Medical Assistance (MA) benefits. This application clearly instructed the Department to direct all correspondence and inquiries to the Claimant's attorney who was also the Claimant's Power of Attorney.
2. On January 18, 2013, the Department sent the Claimant a DHS-3503, Verification Checklist requiring verification of income and assets as well as verification of what was held in an irrevocable trust. The checklist was not sent to the Claimant's attorney.
3. The Department's worker in this case testified during the hearing that at some point in time she contacted the Claimant's attorney to determine what sort of trust the Claimant had.
4. On February 1, 2013, the Department denied Claimant's application due to the Claimant's failure to return the required verification.
5. On February 1, 2013, the Department sent the Claimant its decision.
6. On February 14, 2013, the Claimant's attorney filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Department's worker in this case testified that though she had contacted the Claimant's attorney to ask about what kind of trust the Claimant had, the worker did not send the Claimant's Attorney the DHS-3503, Verification Checklist. When she was questioned as to why she did not send the checklist to the attorney, the Department's worker replied that she didn't have verification that the attorney had been appointed power of attorney nor did she request any verification of that. As such, the worker

conceded that she never did send the attorney the verification checklist. The Claimant is in a nursing home and suffers from dementia.

Additionally, Bridges Administrative Manual (BAM) 110 (2011), p. 7, provides that an Authorized Representative is a person who applies for assistance on behalf of the Claimant and/or otherwise act on behalf of the Claimant. BAM 110, p. 8, provides that the Authorized Representative must give her name, address, and title or relationship to the Claimant. An application may be made on behalf of the Claimant, but the Authorized Representative must have a signed authorization to act on behalf of the Claimant by the Claimant, the Claimant's spouse, parents or legal guardian. The application form must be signed by the Claimant or the individual acting as the Claimant's Authorized Representative.

In this case, the Departments worker did not have a signed authorization (Power of the Attorney) at the time that the worker telephoned the Claimant's attorney to ask about what sort of trust the Claimant had. She also did not ask for such signed authorization. Yet, she was well aware that the Claimant had an attorney and a Power of Attorney, as she telephoned that attorney to inquire about the trust. That telephone call likely occurred before the DHS-3503, Verification Checklist was issued as is evidenced by the request for verification of an "irrevocable" trust on that checklist. However, that checklist did not go to the attorney, but rather to the Claimant who suffers from dementia. When no verifications were returned, the Claimant's case was closed. Furthermore, BAM 130 (2011) p. 3, provides that the Claimant must obtain the required verification, but the worker must exist if the Claimant needs and requests help. In this case, the Departments worker should have been cognizant of the fact that the Claimant needed help, as the Claimant had a Power of Attorney and as the worker actually telephoned that person for information.

Therefore, this Administrative Law Judge concludes that the Department was not acting in accordance with its policy when taking action to close the Claimant's MA case for failure to submit the required verification. This is because the Departments worker did not send the DHS-3503, verification checklist to the Claimant's Power of Attorney.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it took action to close the Claimant's MA case.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine the Claimant eligibility for MA back to the date her application was denied, and
2. Issue the Claimant any supplements she may thereafter be due.

Susanne E. Harris

Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/3/2015**

Date Mailed: **3/3/2015**

SEH/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

