

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201345719
Issue No: 2006
Case No: [REDACTED]
Hearing Date: July 11, 2013
Jackson 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 [REDACTED] to the Department of Human Services (department) on April 30, 2013. After due notice, a telephone hearing was held on July 11, 2013. [REDACTED], a representative with [REDACTED], appeared by three-way conference call and provided testimony on Claimant's behalf. The department was represented by [REDACTED], an eligibility specialist, and [REDACTED] an assistance payments supervisor, both with the department's Jackson County office.

ISSUES

1. Whether [REDACTED] was authorized to submit a hearing request on behalf of Claimant?
2. Whether the department properly denied Claimant's March 7, 2011 application for Medicaid due to a failure to timely provide the required verification?

FINDINGS OF FACT

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

1. On September 12, 2012, in the matter of [REDACTED] by [REDACTED], *Personal Representative, v. Michigan Department of Human Services*, Jackson County Circuit Court Judge [REDACTED] entered a Stipulated Order to Remand to Department and Dismiss, ordering the department to reinstate and reprocess the March 7, 2011 Medicaid application filed on behalf of [REDACTED] Willis by [REDACTED], personal representative of the Estate of [REDACTED]. The Stipulated Order was signed by [REDACTED], attorney for [REDACTED] by [REDACTED], Personal Representative, and by [REDACTED],

Attorney for the Michigan Department of Human Services. (Department Exhibit 5)

2. On February 4, 2013, the department mailed a Verification Checklist to [REDACTED], in the care of attorney [REDACTED], to the address of [REDACTED], Michigan. The Verification Checklist requested verification of Claimant's sick pay, worker's compensation, or disability benefits. The information was due to the department by February 14, 2013. (Claimant Exhibit A-5)
3. On February 14, 2013, the department received from [REDACTED] employee [REDACTED] a request for a 10-day extension of the February 14, 2013 verification deadline. (Claimant Exhibit A-8)
4. On February 15, 2013, the department's case specialist assigned to this case, [REDACTED], contacted [REDACTED] employee [REDACTED] and informed her that the department could not grant the request to extend the verification deadline because [REDACTED] had not submitted documentation authorizing [REDACTED] to act as Claimant's authorized representative.
5. On February 15, 2013, the department received the first page of a two-page document titled "Letters of Authority for Personal Representative", indicating that, on June 28, 2011, attorney [REDACTED], [REDACTED], Michigan [REDACTED], had been appointed and qualified by Jackson 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. (Department Exhibit 3)
6. On February 19, 2013, the department mailed attorneys [REDACTED] and [REDACTED] an Application Eligibility Notice, informing them that the March 7, 2011 Medicaid application filed on behalf of [REDACTED] had been denied for failure to provide verification of income as requested on February 4, 2013 and which was due on February 14, 2013. (Claimant Exhibit A-9)
7. On February 21, 2013, the department received from [REDACTED] the outstanding verification required to process Claimant's March 7, 2011 Medicaid application.
8. On May 2, 2013, the department received a hearing request submitted by [REDACTED], dated April 30, 2013, protesting the denial of Claimant's March 7, 2011 Medicaid application. The hearing request submitted by

██████████ included an Authorization to Represent, signed on June 28, 2011 by ██████████, personal representative for the Estate of ██████████, and authorizing ██████████ to act as authorized representative in all proceedings necessary to establish eligibility for Medicaid. (Request for Hearing; see also Department Exhibit 6)

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 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).

Department policy provides that clients must cooperate with the local office in determining initial and ongoing eligibility with all programs. Department policy further

provides that clients must take actions within their ability to obtain verifications and Department staff must assist when necessary. BAM 130, BEM 702. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130. For MA, the client is allowed 10 calendar days (or other time limit specified in policy) to provide the verification requested. If the client cannot provide the verification despite a reasonable effort, the time limit is extended up to three times. BAM 130. If the client cannot provide the verification despite a reasonable effort, the department should extend the time limit at least once. BAM 130. The department should send a negative action notice when (i) the client indicates a refusal to provide a verification; or (ii) the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130.

The application form for MA benefits must be signed by the client or the individual acting as his authorized representative. BAM 110, p. 8. An application received from an agency is acceptable if it is signed by an individual and is accompanied by written documentation from the client authorizing the agency to act as their authorized representative. BAM 110, p. 9.

In this case, on September 12, 2012, in the matter of [REDACTED] by [REDACTED], *Personal Representative*, v. *Michigan Department of Human Services*, Jackson County Circuit Court Judge [REDACTED] entered a Stipulated Order to Remand to Department and Dismiss, ordering the department to reinstate and reprocess the March 7, 2011 Medicaid application filed on behalf of [REDACTED] by [REDACTED], personal representative of the Estate of [REDACTED]. The Stipulated Order was signed by [REDACTED], attorney for [REDACTED] by [REDACTED], Personal Representative, and by [REDACTED], Attorney for the Michigan Department of Human Services.

On February 4, 2013, the department mailed a Verification Checklist to [REDACTED], in the care of attorney [REDACTED], to the address of [REDACTED], Michigan. The Verification Checklist requested verification of Claimant's sick pay, worker's compensation, or disability benefits. The information was due to the department by February 14, 2013. On February 14, 2013, the department received from [REDACTED] employee [REDACTED] a request for a 10-day extension of the February 14, 2013 verification deadline. On February 15, 2013, the department's case specialist assigned to this case, [REDACTED], contacted [REDACTED] employee [REDACTED] and informed her that the department could not grant the request to extend the verification deadline because [REDACTED] had not submitted documentation authorizing [REDACTED] to act as Claimant's authorized representative.

On February 15, 2013, the department received the first page of a two-page document titled "Letters of Authority for Personal Representative", indicating that, on June 28, 2011, attorney [REDACTED], [REDACTED], Michigan [REDACTED], had been appointed and qualified by Jackson 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.

On February 19, 2013, the department mailed attorneys [REDACTED] and [REDACTED] an Application Eligibility Notice, informing them that the March 7, 2011 Medicaid application filed on behalf of [REDACTED] had been denied for failure to provide verification of income as requested on February 4, 2013 and which was due on February 14, 2013.

On May 2, 2013, the department received a hearing request submitted by [REDACTED], dated April 30, 2013, protesting the denial of Claimant's March 7, 2011 Medicaid application. The hearing request submitted by [REDACTED] included an Authorization to Represent, signed on June 28, 2011 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.

At the July 11, 2013 hearing in this matter, the department's representatives asserted that [REDACTED] was without authority to request a hearing on behalf of Claimant because attorney [REDACTED] was not authorized to transfer his court-appointed personal representative responsibilities to another person. The department's representatives further asserted that even if [REDACTED] had been lawfully authorized by attorney [REDACTED] to request a hearing on Claimant's behalf, the department had acted properly in denying Claimant's March 7, 2011 Medicaid application for failure to verify information because [REDACTED] did not demonstrate that [REDACTED] had been appointed Claimant's authorized representative at the time that [REDACTED] requested an extension of the verification deadline on February 14, 2013.

In response, [REDACTED], a representative with [REDACTED], testified that [REDACTED] is an attorney employed by [REDACTED] and, in this capacity, Mr. [REDACTED] has the power to delegate his personal representative responsibilities to others, including to [REDACTED], for purposes of pursuing Medicaid eligibility on behalf of Claimant's Estate. Mr. [REDACTED] further testified that the department acted improperly in denying Claimant's March 7, 2011 Medicaid application for failure to verify information because [REDACTED] had previously provided the department with the June 28, 2011 Authorization to Represent form, demonstrating that it was authorized to request an extension of the verification deadline.

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 first page of a two-page document titled "Letters of Authority for Personal Representative",¹ indicating that, on June 28, 2011, attorney [REDACTED], [REDACTED], Michigan [REDACTED], had been appointed and qualified by Jackson 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.

Section 3715 of the Estates and Protected Individuals Code, 1998 PA 386, MCL 700.3715, governs the transactions authorized for personal representatives and provides in relevant part that a personal representative, acting reasonably for the benefit of interested persons, may properly do, among other things, the following:

(v) Employ, and pay reasonable compensation for reasonably necessary services performed by, a person, including, but not limited to, an auditor, investment advisor, or agent, even if the person is associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act on such a person's recommendations without independent investigation; and, instead of acting personally, employ 1 or more agents to perform an act of administration, whether or not discretionary. MCL 700.3715(v). (Emphasis added)

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, under Section 3715(v) of the Estates and Protected Individuals Code, [REDACTED], as personal representative of the Estate of Claimant, was indeed legally authorized to appoint [REDACTED], a firm with whom Mr. [REDACTED] was and remains associated, to serve as Claimant's authorized representative in all proceedings necessary to establish Claimant's eligibility for Medicaid.

And while the department's representatives assert that [REDACTED] failed to provide the department with the June 28, 2011 Authorization to Represent form prior to May 2, 2013, thus precluding the department from accepting [REDACTED]'s February 14, 2013 request to extend the verification deadline, this Administrative Law Judge finds persuasive Mr. [REDACTED]'s testimony to the contrary. But, even if an issue of fact remains regarding this point, it is immaterial against the backdrop of [REDACTED]'s attempt to comply by faxing the department the Letters of Authority on February 15, 2013 and by ultimately submitting the required verification on February 21, 2013, which would have been deemed by the department to be within the window of an otherwise permissible 10-day extension of the verification deadline.

¹ Neither party provided this Administrative Law Judge with the second page of the two-page document titled "Letters of Authority for Personal Representative."

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 hearing, that [REDACTED] did have written authorization to serve as Claimant's authorized representative and to request a hearing on Claimant's behalf. This Administrative Law Judge further finds that the department did not act in accordance with policy when the department denied Claimant's March 7, 2011 Medicaid application on February 19, 2013 due to Claimant's failure to provide the required verification.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not act in accordance with policy when the department denied Claimant's March 7, 2011 Medicaid application on February 19, 2013 due to Claimant's failure to provide the required verification. The department is therefore **ORDERED** to immediately reinstate and reprocess Claimant's March 7, 2011 Medicaid application pursuant to department policy.

It is SO ORDERED.

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

Date Signed: July 18, 2013

Date Mailed: July 18, 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.

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- 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/aca

cc:

