

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

IN THE MATTER OF:



Reg. No.: 20138262
Issue No.: 2006, 2018
Case No.: [REDACTED]
Hearing Date: April 11, 2013
County: Wayne DHS (35)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 telephone hearing was held on April 11, 2013, from Detroit, Michigan. Participants included [REDACTED] as Claimant's authorized hearing representative (AHR). Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) benefits due to an alleged Claimant failure to submit required medical 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. On 1/6/12, Claimant applied for MA benefits.
2. Claimant's application had an authorized representative (AR).
3. On 12/15/11, DHS requested a Medical Examination Report (DHS-49) and Activities of Daily Living (DHS-49G) from Claimant's AR.
4. In response to the DHS request, Claimant's AR returned dozens of medical documents but not a DHS-49 or DHS-49G.
5. On 4/25/12, DHS denied Claimant's MA benefit application due to an alleged failure by Claimant's AR to timely return requested verifications.

6. DHS did not mail notice of the denial to Claimant's AR.
7. On 10/16/12, Claimant's AR requested a hearing to dispute the denial of MA benefits.

CONCLUSIONS OF LAW

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

The present case concerned the denial of a MA benefit application. Prior to an analysis of the application denial, it must first be determined whether Claimant timely requested a hearing.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (5/2010), p. 4. The request must be received anywhere in DHS within the 90 days. *Id.* Claimant's AR submitted the hearing request more than 90 days after the written notice of denial was issued. DHS issued a written notice to Claimant, but did not mail one to the AR.

An authorized representative (AR) is a person who applies for assistance on behalf of the client and/or otherwise acts on his behalf (for example, to obtain FAP benefits for the group). BAM 110 (1/2011), p. 7. The AR assumes all the responsibilities of a client. *Id.*, p. 8. It is implied that the AR also receives procedural rights of a client. One of those rights is the right to receive notices of DHS case actions. Because DHS failed to issue a written notice of the denial to the AR, the 90 day time period could not have begun to run on the hearing request. Accordingly, the hearing request was timely submitted. And an analysis of whether DHS properly denied the MA benefit application may be undertaken.

DHS alleged that Claimant's application was properly denied because Claimant's AR failed to complete and return required verifications. A client not eligible for RSDI based on disability or blindness must provide evidence of his disability or blindness. BEM 260 (10/2011), p. 3. DHS specialists are directed to do all of the following to make a referral to the Medical Review Team (MRT) (see *Id.*):

- obtain evidence of the impairment (such as a DHS-49, DHS-49-D or equivalent medical evidence/documentation);
- complete an DHS-49-B, Social Summary;
- obtain an DHS-49-F, Medical-Social Questionnaire, completed by the client; and
- obtain optional form DHS-49-G, Activities of Daily Living, completed by the client.

DHS is then to forward the medical evidence, DHS-49-B, DHS-49-F and DHS-49-G (optional) to the MRT. *Id.* It is also noted that the specialist must follow the procedures listed in BAM 815 in processing the medical determination.

DHS cited the DHS-49G (Activities of Daily Living) as one the required verifications not returned by Claimant. As noted above, the DHS-49G is an optional form. DHS cannot justify an application denial based on an alleged failure to return an optional form.

DHS also cited Claimant's failure to return a DHS-49 (Medical Examination Report) as a basis for the application denial. It was not disputed that Claimant's AR submitted dozens of medical documents, but no DHS-49. DHS policy mandates that DHS obtain evidence of an impairment. The DHS-49 is but one example of such evidence. The dozens of medical documents returned by Claimant should have sufficed as evidence of the impairment, even without a DHS-49. It is found that Claimant had no requirement to return the DHS-49 or DHS-49G. Accordingly, the DHS basis for the application denial was improper.

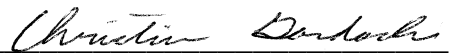
For good measure, the evidence also established that Claimant's AR requested an extension to submit the DHS-49 and DHS-49G by the DHS-imposed due date. DHS capriciously denied the extension. This could have also justified a reversal of the DHS decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 1/6/12 for MA benefits; and
- (2) process Claimant's application subject to the finding that DHS may not deny Claimant's application for a failure to return a DHS-49 and/or DHS-49G

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/17/2013

Date Mailed: 4/17/2013

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. (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

CG/hw

cc:

