

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-14435
Issue No(s): 2003
Case No.: [REDACTED]
Hearing Date: January 7, 2014
County: Jackson

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

HEARING DECISION

Following 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 January 7, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED].

Prior to the hearing, this matter was before Administrative Law Judge [REDACTED] Register No. 2012-64217, who heard the matter on September 11, 2012. ALJ [REDACTED] dismissed the case for lack of jurisdiction. ALJ [REDACTED] found that "the surviving spouse had the authority to sign the application for her deceased spouse, but not to appoint [REDACTED] as an authorized representative to file an application for MA per BEM 135 whose rights survive their spouse's death to represent them as a surviving spouse." ALJ [REDACTED] also noted in her Decision that "[REDACTED] filed a hearing on behalf of the deceased wife . . . who they had authorization to represent for the filing of the deceased spouse MA application. During the hearing, the department contested the standing of [REDACTED] to ask for hearing. This Administrative Law Judge finds that [REDACTED] did not have standing to request a hearing because of the department's failure to process the application." ALJ [REDACTED] decision was mailed September 19, 2012.

On October 18, 2012, [REDACTED] submitted a written Request for Rehearing/Reconsideration. On November 26, 2013, Supervising Administrative Law Judge [REDACTED] issued an Order Granting Request for Rehearing. See Register No. 2013-6059. In her Order ALJ [REDACTED] found that "the decedent's spouse authorized [REDACTED] Inc. to act on her behalf to seek MA benefits on behalf of her deceased spouse. Pursuant to policy, an application may be made on behalf of a deceased person. The widow or widower is allowed to proceed on behalf of the deceased spouse. As such, the widow or widower is not prohibited from authorizing someone (agency, attorney, friend, etc.) to act on their behalf in pursuing (sic) potential MA benefits. An estate is not

required because the surviving spouse has the authority to pursue MA benefits on behalf of her deceased spouse. There is nothing in policy or other statutory provisions that prohibits a spouse from authorizing an entity or individual to assist in her pursuit of benefits to include going to hearing on behalf of her deceased spouse.”

ISSUE

Did the Department properly deny Claimant’s application for Medicaid (MA)?

Did L&S have the authority to request a hearing on the denial?

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 spouse is deceased. His date of death is [REDACTED]
2. On January 3, 2012, Claimant’s surviving spouse authorized [REDACTED] in writing to represent her in proceedings necessary to establish eligibility for MA relative to her deceased spouse.
3. On February 27, 2012, [REDACTED] submitted an application for MA.
4. In a Notice of Case Action dated April 11, 2012, the Department denied the application, stating, “After death the person does not exist as a legal entity, so no one can represent the person. However, if a person dies while the application is pending, the application should be processed. An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. Only a Probate Court can create a decedent’s estate. The Court will also appoint someone to act as a representative of the estate.”
5. [REDACTED] requested a hearing on the denial.
6. At a prior hearing, the ALJ concluded that [REDACTED] did not have the authority to request a hearing.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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.

A hearing was held before ALJ [REDACTED] on September 12, 2012. In her decision, ALJ [REDACTED] concluded (page 4) that [REDACTED] "the surviving spouse had the authority to sign the application for her deceased spouse, but [REDACTED] not to appoint [REDACTED] as an authorized representative to file an application for MA per BEM 135 whose rights survive their spouse's death to represent them as a surviving spouse. Therefore the department was correct in not processing the application. Even if the department appropriately had an issue with [REDACTED] being the authorized representative, the department had the surviving spouse's address and the department should have asked her to sign the application directly through the verification checklist." ALJ [REDACTED] concluded her decision by finding:

[REDACTED] filed a hearing on behalf of the deceased wife . . . who they had authorization to represent for the filing of the deceased spouse MA application. During the hearing, the department contested the standing of [REDACTED] to ask for hearing. This Administrative Law Judge finds that [REDACTED] did not have standing to request a hearing because of the department's failure to process the application. Only the surviving spouse could request a hearing."

[REDACTED] requested a rehearing of ALJ [REDACTED] decision. Supervising ALJ [REDACTED] found that "the decedent's spouse authorized [REDACTED] to act on her behalf to seek MA benefits on behalf of her deceased spouse. Pursuant to policy, an application may be made on behalf of a deceased person. The widow or widower is allowed to proceed on behalf of the deceased spouse. As such, the widow or widower is not prohibited from authorizing someone (agency, attorney, friend, etc.) to act on their behalf in pursuing (sic) potential MA benefits. An estate is not required because the surviving spouse has the authority to pursue MA benefits on behalf of her deceased spouse. There is nothing in policy or other statutory provisions that prohibits a spouse from authorizing an entity or individual to assist in her pursuit of benefits to include going to hearing on behalf of her deceased spouse."

ALJ [REDACTED] decision is persuasive. Her discussion will not be repeated in its entirety here. The essential issue is whether [REDACTED] had the authority to request a hearing on behalf of the Claimant pursuant to the written authorization of the Claimant's surviving spouse. As provided in BAM 110, for MA only, "Application may be made on behalf of a client by his spouse, parent, legal guardian, adult child, stepchild, core relative or any other person provided the person is at least age 18 or married. If this person is not a spouse, parent, legal guardian, adult child, stepchild, or core relative, the person must have authorization to act on behalf of the client, by the client, client's spouse, parent(s) or legal guardian." Clearly, an application may be made on behalf of a client by his spouse, "or any other person" who is at least age 18. The client's spouse can authorize another person to act on behalf of the client. The application itself (DHS-1171), on page S, recognizes that the application could be completed by someone other

than the Claimant, including a representative. Page T of the application also acknowledges that the application can be submitted by a third-party.

The parties concur that a surviving spouse can submit an application seeking benefits for the decedent. The issue here is whether the surviving spouse can authorize a third-party to request a hearing. Following ALJ [REDACTED] reasoning, the finding here is that [REDACTED] had the legal authority to request a hearing on behalf of the Claimant as provided by the written authorization from the Claimant's surviving spouse. Furthermore, the Department erred when it concluded that Letters of Authority issued by a Probate Court were necessary for the surviving spouse to appoint [REDACTED] to submit an application for benefits on behalf of the decedent. Lastly, ALJ [REDACTED] erred in finding that [REDACTED] lacked the legal authority to represent the surviving spouse at the prior hearing.

The Administrative Law Judge, based on 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 denied Claimant's application for MA benefits.

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 Claimant's MA benefit eligibility, effective February 1, 2012;
2. To the extent required by policy, provide Claimant with retroactive and supplemental MA benefits.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 9, 2014

Date Mailed: January 9, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

DTJ/las

cc:

