

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

IN THE MATTER OF:



New Reg. No.: 14-011998-RECON
Old Reg. No.: 14-011998
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: February 25, 2015
County: Jackson

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Attorney from [REDACTED] timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on February 25, 2015, and mailed on March 3, 2015, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the appellant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on September 11, 2015.

ISSUE

Whether the ALJ of record properly dismissed the request for hearing?

FINDINGS OF FACT

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

1. The Findings of Fact Numbers 1-7 under Registration Number 14-011998 are incorporated by reference.

2. On February 25, 2015, a hearing was held resulting in a Hearing Decision mailed on March 3, 2015.
3. On April 2, 2015, the Michigan Administrative Hearing System (MAHS) received the Claimant's Request for Rehearing/Reconsideration.
4. On September 11, 2015, the Request for Rehearing/Reconsideration was granted.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In the instant request for rehearing [REDACTED] asserts the ALJ of record erred by dismissing the request for hearing filed August 22, 2014. The request for hearing filed on August 22, 2014 challenged the Department's denial of MA benefits. The ALJ of record determined the request filed on August 22, 2014 was not valid as no written authorization was attached to the request for hearing. Therefore the request was dismissed without addressing the substantive.

The ALJ of record cited the following sections of policies located in BAM 600 as the basis for dismissing the request for hearing.

All clients have the right to request a hearing. The following people have authority to exercise this right by signing a hearing request:

- An adult member of the eligible group; **or**
- The client's authorized hearing representative (AHR). BAM 600, p 2 (7/1/2014).

Requests for a hearing must be made in writing and signed by one of the persons listed above. The request must bear a signature. Faxes or photocopies of signatures are acceptable. Michigan Administrative Hearings System (MAHS) will deny requests signed by unauthorized persons and requests without signatures. BAM 600, p 2 (7/1/2014).

The appointment of an Authorized Hearing Representative (AHR) must be made in writing. An AHR must be authorized or have made application through probate court **before** signing a hearing request for the client. BAM 600, p 2 (7/1/2014).

The Department must verify the AHR's prior authorization unless the AHR is the client's attorney at law, parent or, for **MA only**, spouse. Relationship of the parent or spouse must be verified only when it is questionable. MAHS will deny a hearing request when the required verification is **not** submitted; see local office and MAHS Time Limits in this item. The following documents are acceptable verification sources:

- Probate court order or court-issued letters of authority naming the person as guardian or conservator.
- Probate court documentation verifying the person has applied for guardian or conservatorship.
- Authorization signed by the client authorizing this person to represent the client in the hearing process.
- Birth or marriage certificate naming the person as parent or spouse. BAM 600, pp 2-3 (7/1/2014).

Note any known information about the identity of the person who signed the request (for example, a spouse) on the DHS-3050, Hearing Summary. Attach a copy of any required verification document to the DHS-3050 and forward to MAHS.

Process requests signed by someone whose AHR status is questionable or unverified according to standard hearings procedures, including restoration of benefits, if appropriate. If MAHS denies the request, re-implement the disputed case action and recoup the restored benefits; see Recouping Program Benefits in this item. BAM 600, p 3 (7/1/2014).

As indicated by the above policy the Department must verify an AHR's authorization unless the AHR is the Claimant's attorney at law. The Department received a request for hearing on behalf of the Claimant. This request was signed and completed by a staff attorney from [REDACTED].

At hearing the Department asserted at the time the request for hearing was filed [REDACTED] did not have authority to request the hearing. The Department based this upon no written authorization being presented at the time the request was filed and the failure to submit any written authorization to the Department indicating the attorney from [REDACTED] was in fact the Claimant's attorney at law and serving as an AHR at the time the request was filed.

While the above policy does indicate a Claimant's attorney at law is not required to provide written authorization, the Department indicated the Claimant already had an assigned AHR on file with the Department. Department Exhibit A, page 29 was admitted which demonstrated an AHR other than [REDACTED] attorney was assigned by the Claimant on December 18, 2013. This AHR's authority according to the written authorization extended to establishing eligibility and included participation in hearings. The Department at the time of the hearing request had no document indicating the prior AHR's authority had been revoked.

The [REDACTED] indicated a verbal conversation had occurred in which the Claimant had appointed [REDACTED] as his attorney. The [REDACTED] attorney representing at the hearing testified a written authorization was signed by the Claimant on September 9, 2014. This document was discussed on the record however the document in question was not admitted into the record. The [REDACTED] attorney indicated she was under the belief that if she provided the Department with a written authorization that the Department would accept this as sufficient authorization. The Department testified that they had indicated they would have accepted her as an AHR for purposes of the prehearing.

The [REDACTED] attorney asserted in the request for rehearing that the ALJ had erred by requiring the Claimant's attorney at law to have a written authorization. [REDACTED] attorney indicated MAHS had treated them as an AHR when processing the requests for adjournments and for scheduling purposes. Therefore, because MAHS had accepted [REDACTED] as the AHR the ALJ erred by not continuing to treat [REDACTED] as the AHR at the time the request for hearing was filed.

When reviewing the record this Supervising Administrative Law Judge finds the ALJ did correctly determine [REDACTED] had no authority to represent at the time the hearing request was filed. The policy indicates a Claimant's attorney at law is not required to provide authorization to represent. However, because the attorney client relationship was not completed as per the testimony of [REDACTED] attorney prior to the submission of the request for hearing, the request filed was done so not by the Claimant's attorney at law. The Claimant was sent paperwork to complete and establish the relationship. The Claimant did not complete this paperwork and/or sign any paper work codifying the attorney client relationship until after the request for hearing was filed.

Further, while the Department is not required to have written authorization from a Claimant's attorney, in this case the Claimant had a prior AHR on record who still remained the Claimant's AHR at the time the request for hearing was filed as no documentation was received to demonstrate that relationship had been extinguished. [REDACTED] assertion that MAHS had treated it as the

AHR prior to this hearing is without merit. An ALJ must address issues presented by parties at hearing. In this case the Department raised a concern regarding the authority of [REDACTED] to request a hearing. The ALJ took testimony and concluded [REDACTED] had failed to demonstrate at the time the request for hearing was filed that it was in fact the Claimant's attorney at law. Since they failed to establish they were the Claimant's attorney at law at the time of the filing of the request for hearing and having failed to provide any written documentation to demonstrate the authority was granted prior to the request being filed the ALJ properly determined the request as filed must be dismissed.

As for [REDACTED] assertion that the ALJ should have granted an adjournment of the hearing due to a filing for guardianship request being in process, this is found to be without merit. The ALJ found the hearing request as filed was not valid. Since the request for hearing was not validly filed no hearing could be held as no jurisdiction exists for the hearing to proceed.

The Supervising Administrative Law Judge finds even though the ALJ issued an order DISMISSING the hearing request and no authority remained to AFFIRM the Department action, the DISMISSAL as issued remains in effect.

DECISION AND ORDER

Based upon the above findings the decision and order entered on March 3, 2015 under registration number 14-011998 filed on August 22, 2014 remains DISMISSED due to a lack of jurisdiction.



Jonathan W. Owens
Supervising Administrative Law Judge
Michigan Administrative Hearing System
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: 09/15/2015

Date Mailed: 09/15/2015

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Appellant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

JWO/sw

cc:

