

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

IN THE MATTER OF:



Reg. No.:
Issue No(s):
Case No.:
Hearing Date:
County:



ADMINISTRATIVE LAW JUDGE: MICHAEL S. NEWELL

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 [REDACTED] [REDACTED] from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] ES.

ISSUE

Did the Department properly deny Claimant's application?

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 [REDACTED] [REDACTED] [REDACTED] Claimant's authorized representative filed a DHS 1171 filing form.
2. A DHS 1171 filing form is not a complete application.
3. On [REDACTED], the Department issued a verification checklist due [REDACTED], requesting Claimant submit a completed application
4. On [REDACTED] [REDACTED] requested an extension to the verification checklist.
5. On [REDACTED], "the filing form request was manually disposed of" but no Notice of Case Action was generated.
6. On [REDACTED], Claimant requested 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.

Additionally, the Department's position is incorrect; the provision in BAM 130 regarding extension requests applies to requests to complete applications. BAM 130, p 7 reads in pertinent part as follow:

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification you request . . . If the client cannot provide the verification despite a reasonable effort, extend the time limit up to three times.

The extension provision applies to verifications requested by the Department, and nothing in policy supports the Department's position that the extension provision does not apply to requests to complete an applications. The provision explicitly applies to requests to verify made under BAM 130 without any limiting language.

The Department argued that BAM 15, p 6 requires the Department to deny an request if 10 days have passed since the Department has requested a completed application, and a completed application is not timely submitted. The Department's position is incorrect. BAM 130, p 6 provides in relevant part;

Do **not** deny an incomplete application until 10 calendar days from the **later** of either the initial:

- Request in writing to the applicant to complete the application form or supply missing information.
- Scheduled interview. [Emphasis in original]

The cited provision is a *prohibition* because it prohibits the Department from denying an incomplete application until one of the two conditions occurs. The provision does not direct the Department to automatically deny an incomplete application without reference to other law and policy once of the conditions are met. If this policy had been intended to create an affirmative duty to deny all incomplete applications after 10 days following a request or scheduled interview, it would be phrased as a positive obligation rather than a prohibition, which is phrased in the negative.

BAM 115 contains several prohibitions, but if all such prohibitions were interpreted as the Department does here, without reference to other applicable policy or exceptions, then virtually everyone in the State could qualify for FIP. To illustrate, BAM 130, p 3 states: “Do **not** approve eligibility until the DHS-1173 is signed **and** returned by **all** other adult mandatory group members.” (Emphasis in original). If this prohibition to not do something until a condition occurred were read as the Department reads the earlier provision against denying incomplete applications, then a DHS-1173, signed by all group members, would trigger FIP eligibility. This is clearly not the case, as there are several considerations, requirements, and exceptions to determining eligibility. Policies are not applied in a vacuum but with reference to all applicable policy. Eligibility for FIP or denial of an incomplete MA application both require the Department to consider and apply all applicable policy.

To illustrate in layman's terms, a hypothetical prohibition against turning left in a left-turn lane before a left-turn light changes to green does not create an affirmative duty to turn left when the light changes to green; there are other considerations such as pedestrians, emergency vehicles, etc. Similarly, there are other policies to consider before denying an incomplete application besides a prohibition against denying it too quickly.

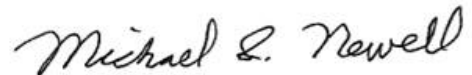
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied the extension request.

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. Reinstate the filing form and request additional documentation if necessary, in accordance with policy.



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 2, 2014

Date Mailed: May 2, 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

MSN/las

cc:

