

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

IN THE MATTER OF:



Reg. No.: 14-014449
Issue No(s): 2002
Case No.: [REDACTED]
Hearing Date: March 5, 2015
County: Dickinson

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 March 5, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's daughter, [REDACTED]; her son, [REDACTED]; and [REDACTED], Administrator for Highland Nursing Home. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED], Eligibility Specialists.

ISSUE

Did the Department of Human Services (Department) properly cancel Claimant's Medical Assistance – Long-Term Care (MA-LTC)?

FINDINGS OF FACT

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

1. Claimant is an MA-LTC benefit recipient.
2. She has at all times relevant to this case resided in a nursing home.
3. On December 30, 2013, Claimant had a yearly MA-LTC review.
4. Returned verification information indicated that Claimant had a funeral contract.
5. On January 14, 2014, the Department caseworker sent a Verification Checklist and a DHS-8A to Claimant and her spouse, [REDACTED], at [REDACTED],

██████████, the address of record requiring Claimant or her Authorized Hearing Representative (AHR) to complete the DHS 8A Form (Irrevocable Funeral Contract Certification) and to submit requested verification by January 24, 2014.

6. On January 24, 2014, no completed DHS 8A Form was received by the Department.
7. On February 14, 2014, the Department sent Claimant a Notice of Case Action stating that Claimant's MA-LTC case would be cancelled effective March 1, 2014, because the verification of burial funds was not returned for Claimant.
8. On March 4, 2014, Claimant's daughter, ██████████, submitted a letter to the Department stating that she was responding to the Notice of Case Action as the new contact person for Claimant. The letter indicated that she provided information for the case audit and submitted information about the burial contract with the letter. The letter also indicated that ██████████ is in ill health and should not be contacted.
9. The Department took no further action on the case because it was closed March 1, 2014.
10. On September 25, 2014, Claimant/Claimant's AHR filed a hearing request, protesting the Department's action.
11. On November 3, 2014, Administrative Law Judge ██████████ sent Claimant notice at ██████████, that her appeal may not be timely and that in the event that the Administrative Law Judge determines, after presentation of evidence and testimony, that the hearing request is not timely with regard to any issue raised therein, inquiry into the merits of that issue will not be made and the hearing request will be dismissed.

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

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.

Although Claimant's AHR did not formally request a hearing until September 25, 2014, this Administrative Law Judge will treat this request for a hearing as timely because Claimant's AHR did contact the Department on March 4, 2014, to dispute the Notice of Case Action.

Pertinent Department Policy dictates:

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- Required by policy. Bridges Eligibility Manual (BEM) items and MAGI policy specify which factors and under what circumstances verification is required.
- Required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for Medicaid Assistance (MA).
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Medicaid

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. Refer to policy in this item for citizenship verifications. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to two times.

At application, redetermination, ex parte review, or other change, explain to the client/authorized representative the availability of your assistance in obtaining needed information. Extension may be granted when the following exists:

- The customer/authorized representative need to make the request. An extension should not automatically be given.
- The need for the extension and the reasonable efforts taken to obtain the verifications are documented.
- Every effort by the department was made to assist the client in obtaining verifications.

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email or MI Bridges document upload), the date of the transmission is the receipt date.

Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a DHS representative are considered to be received the next business day.

Send a case action notice when:

- The client indicates refusal to provide a verification, **or**
- The time period given has elapsed.

Only **adequate** notice is required for an application denial. **Timely** notice is required to reduce or terminate benefits.

Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130, page 7-8

Claimant's AHR testified that Claimant has received MA-LTC for years. Her circumstances have not changed. Claimant's husband was receiving her documentation at his address, but he has recently been moved to a nursing home and is unable to take care of Claimant's correspondence. The Department had been provided with documentation of the funeral contract in the past. Claimant's nursing home bills have not been paid since March 2014. It will create a hardship for Claimant if her nursing home bills are not paid.

Michigan law allows a person to contract and pay in advance for a funeral. This is called a prepaid funeral contract; see BEM 400.

In this item, **the act** refers to MCL 328.211.

General provisions of the act are as follows:

- The **contract seller** is the person/establishment providing the prepaid funeral contract. The seller may be the funeral provider.
- The **funeral provider** is the person/establishment shown in the prepaid funeral contract as agreeing to furnish specified funeral goods and/or services. The provider need not be a party to the contract.
- Contract sellers and funeral providers must be registered with the Michigan Department of Licensing and Regulatory Affairs (LARA).

- The purchaser, beneficiary, funeral provider and/or contract seller decide what funeral goods and services are contracted for.
- Only a **guaranteed price contract** may be certified **irrevocable**.
- The purchaser, beneficiary, funeral provider and/or contract seller decide what funeral goods and services are contracted for.
- Only DHS or the Michigan Department of Community Health (MDCH) may certify a funeral contract irrevocable by completing a DHS 8-A.
- Amounts paid for contracted funeral goods and services may be reallocated to other funeral goods and services. However, an irrevocable contract cannot be terminated.
- Interest or dividends earned on an irrevocable contract fund are considered part of that fund and may not be given to the purchaser/beneficiary.
- A DHS-8A, Irrevocable Funeral Contract Certification, cannot be used to certify a life insurance funded funeral or annuity funded funeral as irrevocable.
- Transfers of a funeral contract with an 8A must be purchased as a Prepaid Guaranteed Price contract with the funeral provider.

TYPES OF MICHIGAN FUNERAL CONTRACTS

A **guaranteed price contract** fixes the price to be charged for funeral goods and services listed in the contract.

A **non-guaranteed price contract** states clearly that the price of listed goods and services might fluctuate. Actual costs at delivery might be more or less than the amount in the contract fund.

A **revocable contract** can be terminated by the purchaser and the money refunded. The refund might be less than the

contract's total value. A contract is revocable **unless** certified irrevocable by DHS using the DHS 8-A.

For program eligibility purposes, an **irrevocable contract** means money in the contract fund, including interest or dividends, is permanently unavailable to the purchaser/beneficiary.

See CONDITIONS TO CERTIFY CONTRACTS IRREVOCABLE in this item.

BAM 805, page 1, October 1, 2014 BPB 2014-019

The Department representatives have the responsibility to:

Tell the applicant/recipient in order to certify a funeral agreement as irrevocable they and their funeral director must complete a DHS 8-A (available on the internet or through the funeral director) and return the completed form to the local office. Tell them they must:

- Complete Section I, **and**
- Have the contract seller complete Section II, **and**
- Give DHS a copy of the contract.

Forward the returned DHS-8A and contract to the **local office director or designee** for certification (completion of Section III). If disapproval is necessary, it must be explained on that form.

A photocopy or facsimile (fax) of a DHS-8A is acceptable.

SSI clients might be referred to DHS to have a contract certified irrevocable. The local office must act on these requests as soon as possible. BAM 805, page 3.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

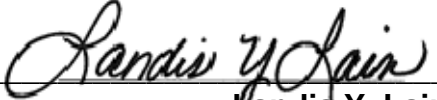
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

This Administrative Law Judge has no equity powers to assist Claimant in this instance. The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it cancelled Claimant's MA-LTC case for failure to provide verification information. Claimant's AHR should reapply for MA benefits and request assistance with providing required verification information.

DECISION AND ORDER

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 act in accordance with Department policy when it cancelled Claimant's MA – LTC case because Claimant did not return the required completed DHS- 8A Form.

Accordingly, the Department's decision is **AFFIRMED**.



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: **3/30/2015**

Date Mailed: **3/30/2015**

LYL/jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

