

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

DHS Req. No: 2009-18566
SOAHR Docket No. 2009-28984 REHD



Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge, in her decision, properly address the relevant issues pertaining to a trust in determining Medical Assistance eligibility?

FINDINGS OF FACTS

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

1. On June 24, 2009, ALJ Tyra Wright issued a Hearing Decision in which the ALJ reversed the Department of Human Services' (DHS) determination of Claimant's patient pay amount. The ALJ ordered the Department to recalculate the patient pay amount.
2. On July 8, 2009, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a Request for Rehearing submitted by the Claimant.
3. On July 29, 2009, SOAHR granted a Reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1-6 from the Hearing Decision, mailed on June 29, 2009, are hereby incorporated by reference.
5. Claimant's spouse created an irrevocable trust with Claimant's spouse as the beneficiary and their daughter as the trustee.

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). The Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The Medical Assistance program provides medical assistance to individuals and families who meet the Medical Assistance financial and non-financial eligibility factors. The goal of the Medical Assistance program is to insure that central healthcare services are made available to those who otherwise would not have financial resources to purchase them. PEM Manual Item 100. Assets must be considered in determining eligibility for SSI related Medical Assistance categories (aged, disability, etc.). PEM Manual Item 100. To be eligible for Medical Assistance countable assets cannot exceed the asset limit. The asset limit for a Medical Assistance household of one for a disabled individual is \$2,000. PEM Manual Item 400.

Pem 402

Initial Eligibility Formula SSI-Related MA

The formula for asset eligibility is:

The value of the couple's (his, her, their) countable assets for the month being tested **MINUS** the "protected spousal amount" (see below) **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in BEM 400 for the category(ies) being tested.

COUNTABLE ASSETS MA Only

Determine countable assets based on SSI-related MA policy in BEM 400. When using BEM 400, the couple is considered an asset group. PEM 402

COUNTABLE ASSETS FROM MEDICAID TRUSTS

How much of the principal of a trust is a countable asset depends on:

The terms of the trust, and

Whether any of the principal consists of “Countable Assets” or “Countable Income.”

Countable Assets

The following are countable assets.

Assets that are countable using SSI-related MA policy in BEM 400. Do not consider an asset unavailable because it is owned by the trust rather than the person. PEM 401 p. 8- 9

MEDICAID TRUST CRITERIA

A Medicaid trust is a trust that meets conditions 1 through 5 below:

The person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility, an MA post-eligibility patient-pay amount, a divestment penalty or an initial assessment amount. A person's resources include his spouse's resources (see definition).

The trust was established by:

The person.

The person's spouse.

Someone else (including a court or administrative body) with legal authority to act in place of or on behalf of the person or the person's spouse, or an attorney, or adult child.

Someone else (including a court or administrative body) acting at the direction or upon the request of the person or the person's spouse or an attorney ordered by the court.

The trust was established on or after August 11, 1993.

The trust was not established by a will.

The trust is **not** described in “Exception A, Special Needs Trust” or “Exception B, Pooled Trust” below. PEM 401

MEDICAID QUALIFYING TRUST

Use the "GENERAL DEFINITIONS" in this item.

A Medicaid qualifying trust (MQT) is a trust that has all of the following characteristics:

- a. It was established before August 11, 1993.
- b. It is established by a person whose assets must be considered or by that person's spouse.
- c. The person whose assets must be considered is the beneficiary of all or part of the payments from the trust.
- d. The amount distributed from the trust is determined by one or more trustees who are permitted to exercise at least some discretion with respect to the amount to be distributed to the person in (c) above.

A trust that is established by a person's guardian or legal representative, acting on the person's behalf, using the person's assets is treated as having been established by the person. PEM 401 pp. 12-13

Countable MQT Assets

The countable asset amount for each person for whom assets must be considered is:

The maximum payment that could be made from the trust (principal or income) to that person as a beneficiary of the trust if the trustee exercised his full discretion under the terms of the trust **Minus** actual payments made by the trust to or on behalf of the person.

Clauses such as those that prohibit distributions that would affect MA eligibility are not considered limits on a trustee's discretion for purposes of this policy. To do otherwise would effectively negate the MQT policy. PEM 401 p. 14.

OTHER TRUSTS

Use the "GENERAL DEFINITIONS" in this item.

Use this policy for any trust that is not a Medicaid trust or an MQT.

Countable Assets

The trust principal is considered an available asset of the person who is legally able to:

Direct use of the trust principal for his needs.

Direct that ownership of the principal revert to himself.

Count only the value of assets that are countable for the MA category being tested per BEM 400. Assume the person owns the asset in determining what is countable. PEM 401 p.14

Irrevocable Trust

Count any portion of a trust's principal or income that is "Countable Assets" or "Countable Income" which cannot be paid to or on behalf of the person as transferred for less than fair market value for purposes of BEM 405.

Be sure to adjust the transferred amount to account for "Multiple Contributors."

The look-back period for such transfers is 60 months.

The date of transfer is the date payment is prohibited. The amount transferred is the amount which cannot be used as of that date plus any countable resources added by the person after that date. PEM 401 p. 11.

RESOURCE DEFINED

Resource means all the client's and his spouse's assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the

individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

The client or spouse.

A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or his spouse.

Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse. PEM 405 p. 1-2.

Transfers Involving Spouse

It is **not** divestment to transfer resources from the client to:

The client's spouse.

Another "SOLELY FOR THE BENEFIT OF" the client's spouse.

Transfers from the client's spouse to another "SOLELY FOR THE BENEFIT OF" the client's spouse are **not** divestment. PEM 405 p. 7.

Under PAM manual item 600 the Department, AHR or, if none, the client may file a written request for rehearing/reconsideration. The client may request a rehearing/reconsideration when one of the following exists:

Newly discovered evidence that existed at the time of the original hearing, and 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.

In the present case, Claimant, via his attorney requested a rehearing because the ALJ dealt with the issue of the Claimant's patient pay amount and that the main issue is whether the Claimant's spouse was obligated to receive a monthly income from the trust. Claimant argues that the patient pay amount issue was merely a side issue. However, Claimant's hearing request specifically states that the issue is regarding the Medicaid patient pay amount.

Letters dated February 23, 2009 and May 26, 2009 from Claimant's attorney state that the: "Request for Hearing concerning the Patient Pay Amount for nursing home case." and "The PPA is the basis for our appeal in this matter." Therefore, the ALJ correctly addresses the basis for the hearing request. There is no basis for a rehearing on the issue of the Administrative law Judges failure to address the issue at the hearing.

Nevertheless, I find that the Administrative law judge erred in making the decision. The trust in this case made "solely for the benefit" of Claimant's spouse should have been evaluated as an asset and not income pursuant policy cited above. As stated in the letter dated December 9, 2008, by DHS Medicaid policy Unit Analyst, "...we must count as the person's countable asset the value if the **Countable Assets** in the trust principal and the value of the trust's **Countable Income**. Everything in the trust is a, asset. Any payments actually made from the trust are unearned income." The trust must be considered as an asset. The Department cannot choose to treat it as income. However, since the trust principle and income are countable, Claimant's spouse may have excess assets for the purposes of getting a "community spousal allowance". Claimant wants an answer regarding whether the Claimant's spouse was obligated to receive a monthly income from the trust. However, the Department does not dictate how a trust is administered but does dictate how Medicaid is administered depending on how the trust is written. Pursuant to policy cited above, as long as the trustee has authority to disburse funds to the beneficiary at will (without this provision the creation of the trust would constitute divestment) the Department must count the principle and income of the trust as an asset. When or if, there is a distribution to the beneficiary that amount is counted as income. The Department should recalculate the eligibility for this Claimant using the trust as asset countable to the spouse.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the request for a rehearing is denied but the Administrative law Judge decision was in error.

[REDACTED]
SOAHR Docket No: 2009-28984 REHD
DHS Reg No: 2009-28180
Reconsideration Decision

IT IS THEREFORE ORDERED:

That the Administrative Law Judge's decision mailed on June 29, 2009 on the issue of Medical Assistance is VACATED.

That the Department is to initiate a review of Claimant's application computing the spouse's trust as an asset and determine Claimant's eligibility.

/s/
Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: November 30, 2009
Date Mailed: December 1, 2009

***** NOTICE *****

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.