

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],  
Claimant

Reg. No: 2010-28055  
Issue No: 2006; 3015  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 12, 2010  
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on May 12, 2010. The claimant did not appear, but her power of attorney, her son, [REDACTED], did appear and present testimony.

ISSUES

1. Did the department properly determine the claimant had excess income to receive Food Assistance Program (FAP) benefits in February, 2010?
2. Did the department properly deny the claimant's Medical Assistance (MA) application for failure to provide verification in March, 2010?

FINDINGS OF FACT

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

1. The claimant applied for MA and FAP benefits on February 22, 2010.  
(Department Exhibit 4 – 18)

2. The department budgeted the income the claimant receives from a trust fund, as well as her Social Security Disability, which caused the claimant to be excess income to receive FAP benefits. (Department Exhibit 23 – 24)

3. The claimant was mailed a Notice of Case Action (DHS-1605) on February 23, 2010 that informed her that her FAP application was denied because she had excess income. (Department Exhibit 21 – 22)

4. The department mailed the claimant a Verification Checklist (DHS-3503) on February 23, 2010, requiring the claimant to submit a current bank statement and proof of trust payments made to the claimant. (Department Exhibit 19 – 20)

5. When no further documentation was received, the department mailed the claimant a Notice of Case Action (DHS-1605) on March 6, 2010, that informed the claimant that MA benefits were denied for a failure to provide the required verifications. (Department Exhibit 25 -26)

6. The claimant submitted a hearing request on March 17, 2010.

#### CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Department

of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case, the claimant's authorized representative disputes the department's decision to deny the claimant's application for FAP due to excess income and MA due to a failure by the claimant to provide verifications. The claimant's representative argues that the trust payments paid to the claimant should not be counted as income and, related, that the principal should not be counted as an asset of the claimant. The department indicates that policy dictates the trust payments must be included as income and the principal is considered an asset of the claimant.

Department policy addresses trusts in BEM 401. Page 5 of 14 indicates the conditions that must be met to consider a trust to be a Medicaid trust. This trust does not meet the policy criteria for a Medicaid trust as the "person whose resources were transferred to the trust" is not someone "whose assets or income must be counted to determine MA eligibility...." Therefore, the trust is considered an "other trust." BEM 401 indicates that the trust principal of an "other trust" is considered an available asset to the person who is legally able to direct use of the trust principal for her needs and can direct that ownership of the principal revert to herself. In the case of the trust involved, Ms. Kolberg is the owner of 16 and 66/100 percent of the principal amount of the trust. It is also noted that the claimant is the beneficiary of a portion of another 10 percent of the trust principal, which is set up as a charitable remainder. The provisions of the charitable remainder portion indicate that Ms. Kolberg will also receive 6 percent each year, of the initial net fair market value (FMV) of the assets of the trust as of the date of the funding of the trust. While no record of the assets of the trust were provided to allow the department to

determine the value of her share of the trust, this Administrative Law Judge must point out that whatever this value is, it would be considered an asset of the claimant.

Further, department policy specifically states that any payment received from an “other trust” is countable unearned income. BEM 401, page 14. The claimant’s representative makes the argument that the payments from the trust to Ms. Kolberg are not used for her support and should not be considered as income. However, when asked what the money that his mother receives is spent on, the claimant testified that he used the money to buy her diapers, coffee, food, pay utilities and do laundry. Thus, the money is clearly being used for the benefit and support of the claimant and her basic needs.

While the drafter of the trust may have attempted to make the trust principal and income free from any asset or income test which might disqualify her for public assistance, this is a rather transparent attempt to circumvent federal law and department policy. The language of the trust makes it clear that the payments are being made to the claimant for her support and benefit. The claimant points to a line in the trust on page four that indicates “[w]henver the Trustee determines that the income of [the claimant] from all sources known to the Trustee is not sufficient for her comfort and happiness, the Trustee may pay to her or use for her benefit, so much of the trust principal as the Trustee determines to be required for those purposes, but not for her support.” However, this is completely contradictory, as basic support is clearly happiness and comfort. The absurd result of this argument is that the Trustee couldn’t pay for food, housing costs or basic needs, but could send the claimant on a vacation.

Further, other portions of the trust also show the intent is to provide support to the claimant. Pages five and six of the trust indicates that the “Trustee may make trust distributions to or on her behalf in such a way that her life will be enriched and made more enjoyable,

including providing recreational and vacation opportunities. The Trustee may expend the trust assets to procure more sophisticated medical and/or dental treatments that may otherwise be available to [the claimant] and to seek private rehabilitative and education training.” Obviously basic comforts and support are going to enrich the claimant’s life and make it more enjoyable.

Thus, this Administrative Law Judge finds that the department correctly found that the claimant’s trust payments must be considered as income and appropriately found that the claimant was excess income to receive FAP benefits.

The claimant’s MA application was denied for failure to provide the required verifications. The claimant was properly mailed a Verification Checklist (DHS-3503) on February 23, 2010, requiring her to provide proof of her checking account and trust payments made to her. These items were due to the department by March 5, 2010. The verifications were never returned to the department.

Department policy requires the claimant to comply with the department in providing the verification materials necessary to allow the department to determine initial or ongoing eligibility. BAM 105. The client is allowed 10 calendar days to provide the verification. Policy directs the department to send a negative action notice when the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130. The claimant or her representative did not request any extension of time to provide the information. Thus, when the due date passed and no verifications had been received, the department had no choice but to deny the application.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department:

1. Properly determined the claimant had excess income to receive Food Assistance Program (FAP) benefits in February, 2010.
2. Properly denied the claimant's Medical Assistance (MA) application for failure to provide verification in March, 2010.

/S/  
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Suzanne L. Keegstra  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 22, 2010

Date Mailed: June 22, 2010

**NOTICE:** Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SLK 

cc: 