

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-30073
Issue No: 2023
Case No: [REDACTED]
Hearing Date:
September 21, 2010
Genesee #05 County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for ALJ Jay W. Sexton

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, an in-person hearing was held on September 21, 2010, before Administrative Law Judge Jay W. Sexton. Administrative Law Judge Sexton is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. This hearing decision was completed by Administrative Law Judge Landis Y. Lain by listening to the spoken record and reading the written record and exhibits contained in the file. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-Long Term Care) based upon its' determination that claimant had excess assets and divestment?

FINDINGS OF FACT

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

- (1) On October 23, 2009, claimant's son and Power of Attorney [REDACTED] filed an application with Ingham County DHS for Medical Assistance benefits based upon her entry into long-term care [REDACTED] (Exhibit A1, page #1)
- (2) On December 3, 2009, the application was transferred and the Genesee County department caseworker received the application.

- (3) The application, at question #31 asks: Within the last 60 months (5 years) have you or a joint owner or other person whose name is also listed on the asset: sold, give away, or transferred ownership in any asset such as those listed above? The box for answer 'Yes' is marked. (Handwritten on the application above question #31 is the word 'surrendered')(Exhibit A1, page #2)
- (4) The application, at question #32 asks: Have you or someone acting for you ever put any money, income, lawsuit, settlement or assets in a trust, annuity or similar device? The box for answer 'Yes' is marked. (Handwritten on the application next to question #31 are the words 'Irrevocable Promissory note')(Exhibit A1, page #2)
- (5) The claimant's representative provided the department with a breakdown of gifted assets on a spreadsheet with the total amount of gifting for that was \$ [REDACTED]. A copy of an unsigned, unexecuted Irrevocable Trust document was sent to the Medicaid Policy Unit in Lansing for evaluation. (Hearing Summary)
- (4) On January 6, 2010, the Medicaid Policy Unit provided the department caseworker with the evaluation of the trust and indicated that divestment had occurred and that the trust is a countable asset. The Policy Unit representative indicated that the countable asset is the value of all the countable net income and the countable assets in the principal of the trust. The Trustee will have to provide you a list of the items and their value that are contained in the trust. (Exhibit A1, Page #8)
- (5) On February 18, 2010, the department caseworker completed a budget and determined that claimant had excess assets and divestment for purposes of Medicaid eligibility. The caseworker determined that total amount used for the divestment calculation is \$ [REDACTED] ([REDACTED] gift + [REDACTED]) (Exhibit A1, Pages 39-40, Hearing Summary)
- (6) On January 13, 2010, the department caseworker sent claimant notice that she had failed the asset test and that eligibility for Medical Assistance benefits was denied based upon divestment.
- (7) On January 14, 2010, claimant's representative filed a request for a hearing to contest the department's negative action.
- (8) The hearing was held on September 21, 2010. At the hearing, the Administrative Law Judge left the record open for the submission of affidavits and documents in support of the existence of the [REDACTED] Irrevocable Trust No.1.

- (9) On October 20, 2010, the department received the Affidavits and documents from Attorney [REDACTED] [REDACTED] (Exhibit C1, Pages # 75-89)
- (10) On December 8, 2010, the department caseworker sent claimant's representative a letter which states in pertinent part: This letter is to inform you of the decision that was made here in the local DHS office, to give [REDACTED] (case no. [REDACTED] Medicaid beginning 10/1/10-7/31/10 with a divestment penalty being served from 10/1/10-1/12/10 which, during that time Medicaid will not pay for Long term care (LTC). During 1/13/10-7/31/10 Medicaid can be billed for LTC with the client having a Patient Pay amount (PPA) of [REDACTED] each month. This should satisfy the hearing that was filed on 1/14/10 with the hearing being conducted on 9/ 21/10." (Exhibit D1-Page #90)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Title XIX of the Social Security Act, commonly referred to as "The Medicaid Act," provides for medical assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21). One of the seven mandated services is *nursing facility services*. 42 USC §1396d(a)(4)(A).

For medical assistance eligibility, the Department has defined an asset as “any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.” NDAC 75-02-02.1-01(3). Under both federal and state law, an asset must be “actually available” to an applicant to be considered a countable asset for determining medical assistance eligibility. [Hecker, 527 N.W.2d at 237 \(On Petition for Rehearing\)](#); [Hinschberger v. Griggs County Social Ser v.](#), 499 N.W.2d 876, 882 (N.D.1993); [42 U.S.C. § 1396a\(a\)\(17\)\(B\)](#); 1 J. Krauskopf, R. Brown, K. Tokarz, and A. Bogutz, *Elderlaw: Advocacy for the Aging* § 11.25 (2d ed. 1993). Yet, “actually available” resources “are different from those in hand.” [Schweiker v. Gray Panthers](#), 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981) (emphasis in original). NDAC 75-02-02.1-25(2) explains: Only such assets as are actually available will be considered. Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. Assets will be reasonably evaluated.... See also [45 C.F.R. § 233.20\(a\)\(3\)\(ii\)\(D\)](#).

As noted in *Hecker*, if an applicant has a legal ability to obtain an asset, it is considered an “actually available” resource. The actual-availability principle primarily serves “to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes non-existent resources to recipients.” [Heckler v. Turner](#), 470 U.S. 184, 200, 105 S.Ct. 1138, 1147, 84 L.Ed.2d 138 (1985).

The focus is on an applicant's actual and practical ability to make an asset available as a matter of fact, not legal fiction. See [Schrader v. Idaho Dept. of Health and Welfare](#), 768 F.2d 1107, 1112 (9th Cir.1985). See also [Lewis v. Martin](#), 397 U.S. 552, 90 S.Ct. 1282, 25 L.Ed.2d 561 (1970) (invalidating California state regulation that presumed contribution of non-AFDC resources by a non-legally responsible and non-adoptive stepfather or common law husband of an AFDC recipient's mother).

Determining whether an asset is “actually available” for purposes of medical assistance eligibility is largely a fact-specific inquiry depending on the circumstances of each case. See, e.g., [Intermountain Health Care v. Bd. of Cty. Com'rs](#), 107 Idaho 248, 688 P.2d 260, 264 (Ct.App.1984); [Radano v. Blum](#), 89 A.D.2d 858, 453 N.Y.S.2d 38, 39 (1982); [Haynes v. Dept. of Human Resources](#), 121 N.C.App. 513, 470 S.E.2d 56, 58 (1996). Interpretation of the “actually available” requirement must be “reasonable and humane in accordance with its manifest intent and purpose....” [Moffett v. Blum](#), 74 A.D.2d 625, 424 N.Y.S.2d 923, 925 (1980).

That an applicant must sue to collect an asset the applicant has a legal entitlement to usually does not mean the asset is actually unavailable. See, e.g., [Wagner v. Sheridan County S.S. Bd.](#), 518 N.W.2d 724, 728 (N.D.1994); [Frerks v. Shalala](#), 52 F.3d 412, 414 (2d Cir.1995); [Probate of Marcus](#), 199 Conn. 524, 509 A. 2d 1, 5 (1986); [Herman v. Ramsey Cty. Community Human Serv.](#), 373 N.W.2d 345, 348 (Minn.Ct.App.1985). See also [Ziegler v. Dept. of Health & Rehab. Serv.](#), 601 So.2d 1280, 1284 (Fla.Ct.App.1992). At issue here is the methodology utilized in determining the availability of an individual's "resources" for purposes of evaluating his or her eligibility. SSI recipients, and thus SSI-related "medically needy" recipients, may not retain resources having a value in excess of \$2,000. [42 U.S.C. § 1382\(a\)\(1\)\(B\)](#).

The regulations governing the determination of eligibility provide that resources mean cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his support and maintenance. If the individual has the right, authority or power to liquidate the property, or his share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse). [20 C.F.R. § 416.1201\(a\)](#).

Under BEM, Item 400, an eligible Medical Assistance recipient may not possess in excess of \$2000 in assets.

Assets mean cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). BEM, Item 400, page 1. Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. An asset is countable if it meets the availability tests and is **not** excluded. Available means that someone in the asset group has the right to use or dispose of the asset. BEM, Item 400, page 5. All types of assets are considered for SSI-related MA. BEM, Item 400, page 2. For Medicare Savings Programs (BEM 165) and QDWI (BEM 169) the asset limit is:

- . \$4,000 for an asset group of one.
- . \$6,000 for an asset group of two.

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one.
- . \$3,000 for an asset group of two. BEM, Item 400, page 5.

HOMES AND REAL PROPERTY EXCLUSIONS

Homestead Definition and Exclusion

SSI-Related MA Only

A homestead is where a person lives (unless **"Absent from Homestead"**) that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude the asset group's homestead. Exclude only one homestead for an asset group. BEM, Item 400, page 20.

SSI-Related MA Only

Exclude a homestead that an owner formerly lived in if **any** of the following are true:

- . The owner intends to return to the homestead.
- . The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.
- . A co-owner of the homestead uses the property as his home. BEM, Item 400, pp. 19-20.

Relative Occupied . Exclude a homestead even if the owner never lived there, provided:

- . the owner is in an institution (see PRM, Glossary), and
- . the owner's spouse or relative (see below) lives there. BEM, Item 400, pp. 19-20.

Relative for this purpose means a person dependent in any way (financial, medical, etc.) on the owner and related to the owner as any of the following:

- . Child, stepchild or grandchild
- . Parent, stepparent or grandparent
- . Aunt, uncle, niece or nephew
- . Cousin
- . In-law

Brother, sister, stepbrother, stepsister, half brother or half sister. BEM, Item 400, pp. 19-20

BEM, Item 401, controls Medical Assistance Trust. Policy defines trust as a right of property created by one person for the benefit of himself or another. It includes any legal instrument or device that exhibits the general characteristics of a trust but is not

called a trust or does not qualify as a trust under state law. Examples of such devices might be annuities, escrow accounts, pension funds and investment accounts managed by someone with fiduciary obligations. A trustee is defined by policy as the person who has the legal title to the assets and income of a trust and the duty to manage the trust with the benefit of the beneficiary. BEM, Item 401, p. 1.

The department caseworker is to refer a copy of the trust to the Medicaid eligibility policy section for evaluation. An evaluation of the trust advises local offices on whether the trust is revocable or irrevocable and whether any trust income or principal is available. Advice is only available to local offices for purposes of determining eligibility or for an initial assessment when a trust actually exists. Advice is not available for purposes of estate planning including advice on proposed trust or proposed trust limits. BEM, Item 401, p. 2.

The Medicaid Trust Unit/eligibility policy section must determine if a trust established on or after August 11, 1993, is a Medicaid trust using Medicaid trust definitions and Medicaid trust criteria. The policy unit also has to determine if the trust is a Medicaid trust and whether there are countable assets for Medicaid trusts; whether there is countable income for Medicaid trusts; and whether there is transfers of assets for less than fair market value. BEM, Item 401, p. 3.

In the instant case, according to a sworn affidavit, dated October 7, 2009, signed by claimant's son and Power of Attorney, indicates that a true and exact copy of claimant's [REDACTED] **Irrevocable Trust No. 1, dated September 25, 1995** was attached and that the trust had not been amended and remained in full force and effect. Claimant is alive and has not revoked the trust. (Exhibit A1-Page #30) An unsigned, unexecuted copy of the trust was provided to the department. (Exhibit A1, Pages #18-29) **According to the dates on the alleged trust document, and the unsigned signature page, [REDACTED] indicates the trust [REDACTED] Trust No. 1 was signed, acknowledged and delivered on September 28, 1995.** (Exhibit A1, Page #29). In a sworn affidavit, signed and executed October 19, 2010, Attorney [REDACTED] states that the [REDACTED] Irrevocable Trust No.1 was signed on **September 28, 1994** and that all assets were transferred to the Trust in 1994. (Exhibit C1, Pages #76-77)

This Administrative Law Judge finds that there is insufficient evidence on the record that there is a signed and executed [REDACTED] Irrevocable Trust No. 1 in existence. There is no signed, executed copy of the trust in the record. The affidavits do not establish that the trust in question was ever in existence since they are contradictory. All of the legal documents, the Affidavits and Trust documents were drafted by Attorney [REDACTED]' affidavit clearly states that the assets were transferred to the Trust a year before it was ever completed, signed or executed according to claimant's POA [REDACTED]. This Administrative Law judge finds that assets cannot be transferred to a trust that is not in existence. Therefore, claimant's assets would have been countable and available on the date of application.

In the alternative, this Administrative Law Judge will continue with the analysis as though the [REDACTED] **Irrevocable Trust No. 1** document exists. If under any circumstances, the Department were able to accept this unsigned, unexecuted document as legally sufficient, the grantor of this alleged trust was claimant. The trust was named as an irrevocable trust agreement. The initial sole trustee was named as [REDACTED] and the alleged current successor is [REDACTED] claimant's son. (Exhibit A1, Page #18)

The trust states in pertinent part:

Provision 1.4 Irrevocable Trust, states: This agreement is expressly made irrevocable and it shall not at any time or by any persons be capable of revocation, alteration, amendment or modification in whole or in part in any manner, except by written instrument signed by 'me', if living, a majority of my adult children and the Trustee. (Exhibit A1, Page #18)

This Administrative Law Judge finds that this provision renders the Trust revocable under certain circumstances and therefore not irrevocable. If an applicant has a legal ability to obtain an asset, it is considered an "actually available" resource. All assets contained in the trust remained countable.

Provision 2.1 During my Lifetime, states: Trustee shall hold, administer and distribute the Trust assets and income there from in one undivided trust for the benefit of me, my children and grandchildren (beneficiaries) as hereinafter provided in this Agreement. (Exhibit A1, Page #19)

The trust document does not provide information of exactly what specific assets fund the trust as of September 28, 1995. There is no attached affidavit or addendum attached to the trust document which provides the department with any information as to exactly which of claimant's assets, if any, became an asset of the alleged trust in 1994 or 1995.

The Medicaid Policy Unit on January 6, 2010, stated:

"This is a Medicaid trust as defined in BEM, Item 401, p. 3. According to article 1.4 of the trust agreement the trust cannot be amended or revoked. Article 2.1 states "**Trustee shall hold, administer and distribute the Trust assets and income there from in one undivided trust for the benefit of me, my children and grandchildren (beneficiaries) as hereinafter provided in this agreement.**"

The Medicaid Policy Unit determined that:

Divestment has occurred. Per BEM 405 page 5 Value of Transferring right to income it states: "When a person gives up his right to receive income, the fair market value is the total amount of income the person could have expected to receive." To determine the divestment period please refer to BEM 405.

The countable asset for [REDACTED] is the value of all the countable net income and the countable assets in the principal of the trust. The Trustee will have to provide you (unless you already have it all of the items and their value that are contained in Ms. [REDACTED] trust. Count any payments made by the trust to [REDACTED] or her legal representative as his unearned income. (BEM 401, page 9, Countable Income from Medicaid trusts)” (Page 8)

The countable asset for claimant is the value of all the countable net income in the countable assets in the principle of the trust. The department was provided with Exhibit 7-A Trust, which states:

On September 28, 1995, [REDACTED] established that [REDACTED] Irrevocable Trust No. 1. In October 1995, [REDACTED] transferred her homestead into the trust. Under the terms of the trust, [REDACTED] is not entitled to any principal. She is entitled to all income. The trust assets consist of the following; the homestead, [REDACTED] account #36814892 and [REDACTED] account #101107066122. The Trust income year to date totals: \$9,369.48. (Exhibit A1, Page #15)

Pursuant to BEM, Item 405, a divestment means a transfer of an asset within the specified look-back period.

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a **MEDICAID TRUST** that are **not** to, or for the benefit of, the person or his spouse; see BEM 401 (divestment).
- Putting assets or income in a trust; see BEM 401.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income into a Limited Liability Company (LLC) (BEM 405, page 2)

Converting an asset from one form to another of equal value is **not** divestment even if the new asset is exempt. Most purchases are conversions.

- Using \$5,000 from savings to buy a used car priced at \$5,000 is conversion for equal value.
- Trading a boat worth about \$8,000 for a car worth about \$8,000 is conversion for equal value.

Payment of expenses such as one's own taxes or utility bills is also **not** divestment. BEM 405, page 8.

Claimant's representative argues the following: that in either 1994 or 1995 claimant transferred particular assets to an irrevocable trust and did not retain any on-going legal rights to any asset contained in the trust. The divestment was completed in 1994 or 1995. Claimant agrees that there was a divestment upon the funding of the trust in 1994 or 1995. Claimant also argues that the funding of the trust was in 1995 and that this is far past the post DRA 5 year look-back and even further past the pre-DRA look-back. Lastly, claimant argues that any penalty related to this divestment has long since expired and if this is treated as an on-going divestment of the income from the asset it is not a divestment due to the specific exception for transfers to a disabled child.

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

- Direct use of the trust principle for his needs.
- Direct that ownership of the principle revert to himself.

The department is to count only the value of assets that are countable for the MA category being tested per BEM, Item 400. Assume the person owns the assets in determining what is countable. The department is to do a complete divestment determination when a person has transferred assets of the trust, the principle is unavailable, and the person is in a penalty situation per BEM, Item 405.

The copy of the unsigned, unexecuted Trust document contained in the file indicates that [REDACTED] was the named trustee, with claimant's son [REDACTED] named as the Successor Trustee. The unsigned trust document indicates on the first page that the trust was to be signed September 28, 2005. (Exhibit A1-18) On page 12 of the unsigned trust document, the date of September 28, 1994 is typed in but the number four in 1994 is crossed out and a number 5 written above it. (Exhibit A1-29) A second document in the file indicates that [REDACTED] resigned as trustee effective November 11, 1995. (Exhibit A1-17) A third document indicates that [REDACTED] accepted to act as Successor Trustee on October 31, 2008. (Exhibit A1-31) Lastly, a fourth document, signed by claimant and witnessed by [REDACTED] indicates that claimant, as grantor and Trustee of the [REDACTED]

Irrevocable Trust Agreement, resigns as trustee effective October 11, 2008. (Exhibit A1-32)

These documents indicate that claimant was the Trustee from November 11, 1995, when [REDACTED] resigned as trustee until October 11, 2008 when claimant resigned as trustee and [REDACTED] accepted to act as trustee. At all times from November 11, 1995 until October 11, 2008, claimant had access and legal ability to pay or distribute part or all of the net income of the trust to herself or her children and grandchildren, and the principal to her children and grandchildren at her absolute discretion. (Exhibit A1-19) Under Section 5.1 *Powers of Trustee*, the trustee may retain any trust power; invest in any property, sell or exchange trust property. (Exhibit A1-24) The trust document does not state that any proceeds from the sale or conversion of trust property must be used for the benefit a particular beneficiary of the trust. Thus, even if the trust document were valid, the assets of the trust remained available to claimant at least until October 2008, when [REDACTED] signed accepted as successor trustee. Thus, in the alternative, divestment occurred in October 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant provided the department with inconsistent information. There is insufficient evidence on the record that there is a signed and executed [REDACTED] Irrevocable Trust No. 1 in existence. There is no signed, executed copy of the trust in the record. The affidavits do not establish that the trust in question was ever in existence since they are contradictory. The claimant's representative provided inconsistent and contradictory evidence and the department was unable to accurately determine claimant's assets under the circumstances. This Administrative Law Judge finds that claimant possessed in excess of \$ [REDACTED] in countable assets on the date of application or in the alternative that the asset level was indeterminable because of the contradictory information provided to the Department. In the alternative the Department has established by a preponderance of evidence that there has been divestment and properly determined that a penalty period should be instituted.

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

Landis

/s/

Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 15, 2011

Date Mailed: August 15, 2011

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.

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