

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: 20107293

Issue No: 3015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 18, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted on February 18, 2010. The Claimant appeared and testified. Claimant was represented by [REDACTED]. Pamela Mack, ES, and Sheila Adams, Services Program Manager appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the Claimant's Food Assistance ("FAP") and Medical Assistance Program ("MA-P) benefits effective June 30, 2009 based on failure to return a copy of a signed trust.

FINDINGS OF FACT

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

1. The Claimant was an active FAP and MA-P recipient.

2. The Department conducted a telephone interview with Claimant on June 24, 2009 regarding recertification of Claimant's FAP and MA benefits.
3. The Department determined that Claimant needed to submit a signed copy of the [REDACTED].
4. On October 22, 2009, an unsigned copy of the trust was provided to the Department. (Exhibit 3).
5. Claimant and her representative testified that the Trust in question was established after citizens donated money following an appeal for Claimant's hardship on the local television station. The language of the Trust limits funds to the maintenance, repair, taxes, insurance and mortgage payments of Claimant's real property. (Exhibits 2, 3).
6. However, according to testimony and evidence, the Trust has also paid monies for utility bills, home repairs, food and uninsured medical or living needs following the Department's denial of benefits. (Exhibit 2).
7. Claimant and her representative testified that the trust is not income producing. The Trust is irrevocable (Exhibit 3) and the current value of the trust is \$5,614.23. (Exhibit 4).
8. Claimant objected to the FAP and MA termination of benefits and filed this appeal. The Department received the Claimant's Request for Hearing on November 5, 2009.

#### CONCLUSIONS OF LAW

The Food Assistance Program, 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"), formally known as the Family Independence Agency, administers the

FAP program pursuant to MCL 400.10, *et. seq.* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Reference Tables (“RFT”).

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, formally known as the Family Independence Agency, 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 Reference Tables (“RFT”).

There are a number of Trusts described in applicable policy. A Medicaid trust requires that the person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility and that the trust was established by the person, or someone acting on the person’s behalf. BEM 401, p. 5. A Special Needs trust is established (for someone under the age 65 and who is disabled) by a court or the person’s parent, grandparent or legal guardian/conservator. BEM 401. p. 6. A Medicaid Qualifying Trust is established by a person whose assets must be considered for benefit eligibility. BEM 401, p. 12. Any trust that qualifies as one of the above is evaluated as an asset in determining Medicaid eligibility.

There is currently no asset limit for FAP eligibility. However, income received by the household must be counted to determine a group’s eligibility for FAP benefits. BEM 500. Certain donations/contributions are considered unearned income for eligibility determination. A donation to an individual by family or friends (an individual outside the EDG) is considered unearned income. Donations from private, for profit organizations are also considered unearned

income. Money received from a private, nonprofit organization based on need is considered unearned income in excess of \$300 per calendar quarter. BEM 503, p. 8.

In the subject case, the undersigned finds the Claimant and her representative's testimony credible and finds that the [REDACTED] Trust was established by funds donated for the Claimant's home. The funds used to establish the Trust were not Claimant's to begin with and since they were placed in a Trust, they are still not Claimant's. Therefore, the Trust does not qualify as a Medicaid Trust, a Special Needs Trust or Medicaid Qualifying Trust under the definitions set forth in BEM 401. This Administrative Law Judge finds, therefore, that the Trust cannot be counted as an asset for Medicaid eligibility. Nor is it needed for FAP eligibility as there is currently no asset limit on FAP. Accordingly, the Department was not entitled to a copy of the signed Trust and improperly terminated Claimant's FAP and MA-P benefits upon Claimant's failure to produce it.

While a signed copy of the Trust is not needed for benefit eligibility determination, any contributions that Claimant received from the Trust or other sources must be counted to determine Claimant's FAP and/or MA eligibility pursuant to BEM 503. The undersigned finds that the Trust does not authorize payments directly to the Claimant. If Claimant were paid monies directly by the Trust contrary to the Trust language, however, that donation could be considered unearned income. Any bills that are covered directly by the Trust would not be considered income as Claimant has never had any control over those funds. The undersigned does not find any evidence in the record that Claimant has received payments directly from the Trust.

Accordingly, based on the evidence and testimony placed in the record, the undersigned finds that the Department improperly terminated Claimant's FAP and MA-P benefits, the

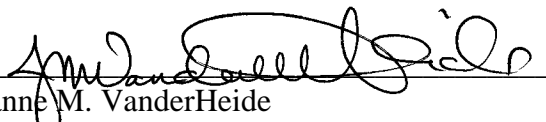
Department's decision is REVERSED and the Department is ordered to reopen and recalculate Claimant's FAP and MA benefits from the date of closure.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly terminated the Claimant FAP and MA-P benefits effective 6/30/09.

Accordingly, it is ORDERED that:

1. The Department's determination to terminate the Claimant's FAP and MA-P benefits effective 6/30/09 is REVERSED.
2. The Department shall reopen and recalculate Claimant's FAP and MA-P benefits from the date of closure, 6/30/09, using actual income received for each month, per BEM 500.
3. The Department shall determine whether Claimant had a MA-P spend down, based on any unearned income, for each month from 6/30/09 through the present and if so, allow Claimant to submit receipts for medical expenditures to determine if the spend down was met for each month.
4. The Department shall supplement the Claimant for any lost benefits she was otherwise entitled to receive from July, 2009 through the present.

/s/   
Jeanne M. VanderHeide  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 25, 2010

Date Mailed: March 25, 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 60 days of the filing of the original request.

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 was made, within 30 days of the receipt date of the rehearing decision.

JV/hw

cc:

