

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201011503  
Issue No. 2021  
Case No. [REDACTED] 6  
Load No. [REDACTED]  
Hearing Date: May 27, 2010  
Kalamazoo County DHS

**ADMINISTRATIVE LAW JUDGE:** Marlene B. Magyar

**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 held on May 27, 2010. Claimant did not appear; however, he was represented by [REDACTED].

**ISSUE**

Did the department properly determine claimant was not eligible for long-term-care Medicaid (MA) in June or July 2009 based on excess assets?

**FINDINGS OF FACT**

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

1. Claimant is an 86-year-old long-term-care resident ([REDACTED]).
2. The department initially approved long-term-care MA coverage for claimant in June 2006, which remained active until 2009.
3. At claimant's 2009 mandatory redetermination, the department closed his case because his DPOA (the community spouse) failed to timely submit the necessary redetermination application, thus necessitating filing an entirely new application.

4. On August 13, 2009 and September 1, 2009, the department received claimant's most recent long-term-care MA/retro-MA applications, again filed by his DPOA (Department Exhibit #1, pgs 1-6).
5. On September 25, 2010, the department denied claimant's MA/retro-MA applications in writing based on excess assets (Department Exhibit #1, pgs 9 and 10).
6. On October 5, 2009, the department received a timely hearing request from claimant's DPOA to dispute the MA/retro-MA denial; however, claimant's hearing was not held until May 27, 2010.
7. By that time, claimant's DPOA retained counsel and negotiations with the department had been ongoing.
8. On the hearing date (5/27/10), counsel stipulated on the record he and the department resolved all issues and effectuated long-term-care coverage in all disputed months except June and July 2009 (two retro-MA months).
9. When the department initially approved claimant eligible for long-term care MA in 2006 his DPOA/spouse provided a copy of their Revocable Trust document, which was created in 1980 (Client Exhibit S).
10. All assets (including all bank account holdings) were placed in this trust and they have remained in this trust at all times relevant to the current controversy.
11. None of the assets in this trust were owned by claimant, per a 2006 Restatement of Trust document, which became effective on [REDACTED], that being several months before claimant's DPOA/spouse filed the MA application originally approved (See Finding of Fact #2 above).
12. The department's subsequent excess asset denial of retro-MA to claimant in June and July 2009 was based on the erroneous conclusion that bank account [REDACTED] ([REDACTED]) was claimant's money, when in fact he had no right to it whatsoever because his wife was/is the sole named trust beneficiary.

### **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 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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Counsel of record in this case contends the department erroneously determined claimant had excess assets in June and July 2009 for long-term-care MA eligibility purposes. This Administrative Law Judge agrees with counsel.

The department's trust policy is located in BEM Item 401. This policy is based on Social Security Act, Section 1902(a)(18) and 1917(d)-(e). After an exhaustive review of the extensive documentary evidence admitted in light of the above-referenced rules, this Administrative Law Judge finds claimant had absolutely no ownership or benefit rights to the trust principle at issue in this case. More importantly, counsel has shown the money at [REDACTED] always was a trust asset. Consequently, the department's attribution of that money to claimant to disqualify him from MA eligibility was erroneous and it simply cannot be upheld.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously determined claimant was not asset eligible for long-term-care MA in June and July 2009.

Accordingly, the department's denial is REVERSED, and this case is returned to the local office for MA authorization effective in each remaining retro-month being disputed. **SO ORDERED.**

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/s/  
Marlene B. Magyar  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: February 10, 2010

Date Mailed: February 10, 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 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.

MBM/db

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