

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. 201023069  
Issue No. 2021  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: September 15, 2010  
Grand Traverse County DHS

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**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 Wednesday, September 15, 2010. The claimant was not present, but was represented by her attorney, [REDACTED]

**ISSUE**

Did the department properly deny the claimant's application for Medical Assistance (MA) based upon its determination that the claimant had excess assets?

**FINDINGS OF FACT**

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

1. On July 22, 2009, the claimant applied for MA with retroactive benefits to March 2009. In addition with her application, the claimant's attorney submitted a [REDACTED] on behalf of the claimant that was an Exception B Trust. In addition, the claimant's RSDI is based on age not disability.
2. On June 12, 2009, the Medicaid Policy Unit sent the department caseworker a memo stating that the [REDACTED] established on [REDACTED] for [REDACTED] through her guardian and conservator executed as an irrevocable joint agreement on [REDACTED]. This is an irrevocable transfer do not count and the trust as an available asset. However, this trust does not meet the guidelines for

an Exception B Trust, which requires that the person must be disabled according to BEM 260, which was based on the Social Security Act, 42 U.S.C. 396p(d)(4)C where the claimant is over the age of 65 at 87 years old with a date of birth of [REDACTED]. This is divestment in accordance to policy in BEM 405, p. 9 because the trustee has discretion to distribute funds from the trust to support the special needs of the claimant where any payments received by the claimant from the trust must be counted as unearned income according to BEM 401, p. 8.

3. On October 1, 2009, the department caseworker sent the claimant a notice that her application was denied because of divestment and a divestment penalty was calculated, which applies to the months of March 1, 2009 to May 15, 2009 because the funds placed in the [REDACTED] [REDACTED] has been determined to be divestment causing a penalty of [REDACTED] divided by [REDACTED] equals [REDACTED], which causes a 2 month and 15 day penalty. (Department Exhibit 11)
4. On December 30, 2009, the department received a hearing request from the claimant, contesting the department negative action.
5. During the hearing, the claimant's attorney argued that the claimant's trust should qualify under the Exception B Trust because the claimant was disabled, but conceded that a disability determination had never been made for the claimant and that she was receiving RSDI based on age not disability.
6. The parties have reached an agreed upon settlement to resolve the dispute. The department agrees to consider the claimant for a disability determination once the claimant's attorney submits the required medical records to make a disability determination.

### **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).

In the present case, the parties have reached an agreed upon settlement to resolve the dispute. The department agrees to consider the claimant for a disability determination once the claimant's attorney submits the required medical records to make a disability determination. If the claimant does not agree with the determination, she may file another request for a hearing.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the parties have reached an agreed upon settlement.

Accordingly, the department is **ORDERED** to reprocess the claimant's July 22, 2009 application with retroactive benefits to March 2009 to determine the claimant's eligibility for disability if the claimant's attorney submits the medical records required to determine a disability determination, if it has not already done so.

/s/ \_\_\_\_\_  
Carmen G. Fahie  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 22, 2010

Date Mailed: November 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.

CGF / vc

cc:

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