

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

IN THE MATTER OF:



Reg. No.: 2010-46332  
Issue No.: 2013  
Case No.: [REDACTED]  
Hearing Date: November 24, 2010  
DHS County: Macomb (50-20)

**ADMINISTRATIVE LAW JUDGE:** Jonathan W. Owens

**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 hearing was held on November 24, 2010. Claimant's attorney appeared on behalf of Claimant.

The record was extended to allow time for Claimant's attorney to present a copy of the trust agreement.

**ISSUE**

Did the Department of Human Services (Department) properly determine Claimant's Medicaid (MA) spend-down case?

**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 April 21, 2010, the Department, after receiving an updated change report indicating Claimant's income was now zero, determined Claimant still received income and found Claimant eligible based on a spend down amount of \$805.
2. On April 30, 2010, Claimant requested a hearing indicating the income being used was in fact in a Pooled Trust.

**CONCLUSIONS OF LAW**

MA-P 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 administers MA-P

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).

Michigan provides MA for eligible clients under two general classifications: Group 1 and Group 2 MA. Claimant falls under Group 2 MA classification which consists of clients whose eligibility results from the State designating types of individuals as “medically needy.” MCL 400.106; MSA 16.490(16); MCL 400.107; MSA 16.490(17); and BEM, Item 105.

In order to qualify for Group 2 MA, a medically needy client must have income which is equal to or less than the protected basic maintenance level. Department policy sets forth the method for determining the protected basic maintenance level by considering: (1) the protected income level; (2) the amount diverted to dependents; (3) health insurance premiums; and (4) remedial services if determining eligibility for clients in adult-care homes. The protected income level is a set amount for non-medical needs such as shelter, food and incidental expenses. In all other cases other than those involving long-term care, the appropriate protected income level must be taken from PRT 240. BEM Item 545; 42 CFR 435.811-435.814. If the individual’s income exceeds the protected income level, the excess amount must be used to pay medical expenses before Group 2 MA coverage can begin. This process is known as “spend-down.” Policy requires the Department to count and budget all income received that is not specifically excluded. There are three main types of income: countable earned, countable unearned and excluded.

In the present case, Claimant is contesting the use of structured settlement payments as income. At hearing, the Department presented copies of the orders indicating the structured settlement payments were to be placed into a Pooled Trust. The Department failed to present a copy of the Trust Agreement or any budgets completed to demonstrate where the \$805 spend-down amount was derived from.

Relevant policy can be found at: BEM 401, pg 2:

**REFERRALS TO MEDICAID ELIGIBILITY POLICY SECTION**

Send a copy of the trust, including similar legal instruments such as annuities, to the Medicaid Eligibility Policy Section for evaluation.

This does not apply to the following:

- Prepaid funeral contracts.
- Life insurance funded funerals.
- Healthy Kids categories; see BEM 125, 129 and 131.
- Group 2 Pregnant Women; see BEM 126.
- Limited Liability Corporations (LLC).
- S-Corporations.

Once a trust has been evaluated, a reevaluation is not required unless the local office believes a change has occurred affecting availability of the trust principal or income including a change in department policy.

An evaluation of a trust advises local offices on:

- Whether a 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 an initial assessment when a trust actually exists. Advice is not available for purposes of estate planning including advice on proposed trusts or proposed trust amendments.

Send your referral as soon as possible so that everyone can complete their tasks timely. Your referral must be in writing and include:

- Your name, email address, phone number and local office.
- What advice you are requesting.
- What programs are involved.
- Whether the grantor is living or dead.
- Whether the person is an applicant or recipient.
- Source of the assets used to establish the trust (for example money from the grantor's lawsuit settlement).
- The MA client's name and, if applicable, their spouse's name.
- The grantor's relationship to the MA client or spouse.
- The name of the person(s) who contributed to the trust and their relationship to the MA client and spouse.

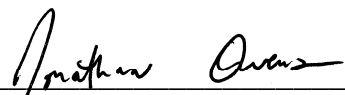
- Legible copies of the complete trust document, all amendments to the trust, addenda, correspondence and other pertinent information.

The record was extended to allow the Claimant's attorney time to provide a copy of the Trust Agreement. The Department's evidence fails to demonstrate the Medicaid Eligibility Policy Section was ever sent a copy of the Trust Agreement for review. The hearing packet failed to have a copy of the Trust Agreement or a copy of any budgets completed by the Department.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was not acting in compliance with Department policy when it determined Claimant's structured settlement payments placed in a Trust were considered income.

Accordingly, the Department's decision is REVERSED and the Department is ORDERED to send a copy of the Pooled Trust Agreement and other required documentation as outlined above to the Medicaid Eligibility Policy Section for a determination. The Department shall then determine MA eligibility in accordance with policy and notify Claimant and his representative of the determination in writing.

  
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Jonathan W. Owens  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: May 4, 2011

Date Mailed: May 4, 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.

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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.

JWO/pf

cc:

