

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

IN THE MATTER OF:



Reg. No. 201115280
Issue No. 2006
Case No. [REDACTED]
Hearing Date: February 17, 2011
Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 February 17, 2011. [REDACTED] appeared and testified as Claimant's Authorized Hearing Representative (AHR); [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly counted Claimant's separated spouse's assets in denying Claimant's application dated 1/4/10 requesting Medical Assistance (MA) benefits.

FINDINGS OF FACT

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

1. On 1/4/10, Claimant's guardian applied for MA benefits on behalf of Claimant (see Exhibit 7).
2. As of 1/4/10, Claimant was married but legally separated from her spouse since 3/6/07 (see Exhibit 5).
3. Claimant was a resident of a nursing facility at the time of her application.
4. On 7/26/10, Claimant passed away.
5. On 9/17/10, DHS requested verification of Claimant's spouse's assets (see Exhibit 3).

6. Claimant's family contacted Claimant's separated spouse for information about his assets but he was uncooperative in providing asset information.
7. On 1/4/11, DHS denied Claimant's application due to Claimant's failure to verify her spouse's assets.
8. On 1/14/11, Claimant's AHR requested a hearing disputing the denial of Claimant's MA benefits.

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 (formerly 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 Manual (RFT). Definitions are provided in the Glossary (BPG)

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

A request for program benefits begins with the filing of a DHS-1171 or other acceptable form. BAM 110 at 1. Before processing an application for MA benefits, DHS may require a client to verify information within their application. Verification is usually required at application. BAM 130 at 1. DHS must give clients at least ten days to submit verifications. *Id.* After the date passes for submission of verifications, DHS may send a negative action notice if the time period given has elapsed and the client has not made a reasonable effort to provide the information. BAM 130 at 5.

Assets must be considered in determining eligibility for SSI-related categories. BEM 400 at 1. It was not disputed that Claimant's eligibility for MA benefits was based on an SSI-related category.

An "L/H patient" is defined as the Medicaid client who was in the hospital and/or long term care facility (LTC) in a hospital and/or long term care facility (L/H) month. BPG at 24. A "community spouse" is defined as an L/H or waiver patient's spouse when the spouse:

- Has NOT been, and is NOT expected to be, in a hospital and/or LTC facility for 30 or more consecutive days, and

- For waiver patients only, the spouse is NOT also approved for the waiver. BPG at 9.

For adults seeking MA for an SSI-related category, an adult's fiscal and asset groups are the adult for an L/H patient, a waiver patient (see BEM 106) and a Freedom to Work client even if he lives with his spouse. BEM 211 at 5. This policy notes one exception; when BEM 402 instructs to determine a couple's countable assets for an "INITIAL ASSET ASSESSMENT" or "Initial Eligibility" the L/H or waiver patient and his community spouse are considered an asset group. *Id.*

In the present case, there was no dispute that Claimant met the definition of a L/H patient and that Claimant's separated spouse met the definition of community spouse. Though most applicants seeking MA benefits under an SSI-related category are not affected by the assets of a separated spouse, DHS makes an exception for L/H patients seeking MA benefits. Based on the above stated policy, L/H patients seeking MA benefits are part of an asset group that also includes the community spouse. It is found that DHS properly included Claimant's separated spouse as part of Claimant's asset group.

BEM 402 instructs DHS specialists that if the community spouse's whereabouts are unknown (e.g., a couple separated prior to the client entering an LTC/hospital setting and the client does not know where the spouse is living or how to contact the spouse), the client's countable assets are compared to the appropriate asset limit in BEM 400 to determine eligibility. BEM 402 at 9. Refusal of the community spouse to provide necessary information or verification about his assets results in ineligibility for the client. BEM 402 at 9. *Id.*

Claimant was legally separated from her spouse since 3/6/07 (see Exhibit 5) though it was not disputed that she remained married on the date of her application requesting MA benefits. Claimant's AHR credibly testified that she was rebuffed by Claimant's spouse after contacting him concerning a reporting of his assets. Claimant's circumstances were considered by DHS policy writers and the result is clear, Claimant's community spouse's lack of cooperation in reporting assets results in ineligibility of MA benefits for Claimant. It is found that DHS properly denied Claimant's application dated 1/14/10 due to a failure to verify asset information of the community spouse.

It should be noted that the undersigned completely empathizes with Claimant's circumstances. The only apparent justification for the DHS regulations holding clients responsible for the noncooperation for a community spouse is to prevent potential fraud and/or finagling of circumstances solely so MA benefit eligibility could be achieved for an L/H patient. For example, a client entering a L/H facility could claim to be separated from the spouse with whom she was just living solely to have DHS foot the bill for medical expenses. It would seem reasonable to allow exceptions when fraud is

improbable. Fraud is improbable when there was a legal separation three years prior to Claimant's application for MA benefits. However, the undersigned only has the authority to determine whether DHS regulations were correctly followed, not whether they are just. In the present case, DHS established that all relevant policies were followed and that DHS properly denied Claimant's application for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA application dated 1/14/10 requesting MA benefits based on Claimant's community spouse's refusal to cooperate in reporting assets. The actions taken by DHS are AFFIRMED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 3/3/2011

Date Mailed: 3/3/2011

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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