

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 201120353
Issue No.: 2021
Case No.: [REDACTED]
Hearing Date: April 13, 2011
Wayne County DHS- 82

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 April 13, 2011. The Claimant's guardian and authorized hearings representative [REDACTED] appeared at the hearing and testified. [REDACTED], ES, and [REDACTED], FIM, appeared on behalf of the Department.

ISSUE

Was the Department correct in denying Claimant's Medical Assistance applications due to 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 applied for MA benefits on November 29, 2010.
- (2) On January 31, 2011 the Department denied Claimant's MA application due to excess assets.
- (3) The Department determined that Claimant owns a parcel of real estate other than her primary resident valued at [REDACTED] at the time of application.

- (4) Claimant owns the parcel of property as joint tenant with full rights of survivorship with her son and daughter. Claimant's attorney at hearing submitted titles confirming this.
- (5) Claimant requested a hearing on February 9, 2011 contesting the denial of 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 Program Reference Manual (PRM). 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Clients must cooperate with the local office in determining initial and ongoing eligibility to provide verification. BAM 130, p. 1. The questionable information might be from the client or a third party. Id. The Department can use documents, collateral contacts or home calls to verify information. Id. The client should be allowed 10 calendar days to provide the verification. If the client cannot provide the verification despite a reasonable effort, the time limit to provide should be extended at least once. BAM 130, p.4; BEM 702. If the client refuses to provide the information or has not made a reasonable effort within the specified time period, then policy directs that a negative action be issued. BAM 130, p. 4.

MA ASSET ELIGIBILITY LIF, G2U, G2C, AMP and SSI-Related MA Only

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories.

Note: Do **not** deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility. Use the special asset rules in [BEM 402](#) for certain married L/H and waiver patients. See BPG Glossary, for the definition of L/H patient and [BEM 106](#) for the definition of waiver patient. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400

**VICTIMS OF
DOMESTIC
VIOLENCE**

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

Assets owned by victims of domestic violence may be unavailable due to domestic violence. These assets do **not** have to be jointly owned but accessing them could put the client in danger. You may exempt these assets for a maximum of three months. With FIM approval one three-month extension is permitted. Document in the case record the reasons for the temporary exclusion, and, if any extension is requested, document what steps have been taken to secure the asset. Clients should be advised at the time of the exemption that they are required to report any changes in the status of the asset within 10 days.

**JOINTLY OWNED
ASSETS**

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

Jointly owned assets are assets that have more than one owner.

For FTW determinations jointly owned assets are considered to belong to the initial person.

An asset is unavailable if an owner **cannot** sell or spend his share of an asset:

Without another owner's consent, and
The other owner is not in the asset group, and
The other owner refuses consent.

In SSI-related MA, when ownership is shared by an SSI-related child and his parent(s) **and** parental asset deeming applies, refusal to sell by either the child or the parent(s) does **not** make an asset unavailable.

Ownership documents for jointly owned real property commonly use one of four phrases:

Joint Tenancy: no owner can sell unless all owners agree.

Joint Tenancy with Right of Survivorship: no owner can sell unless all owners agree.

Tenancy by the Entirety: same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.

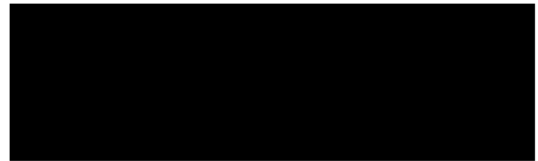
Tenancy-in-Common: each owner can sell his share without the other owner's agreement.

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In the present case, Claimant's attorney and guardian argued at hearing that the parcel of real estate in question is owned as joint tenants with full right of survivorship that the other joint tenants refuse to sell and therefore the parcel of real estate is unavailable and should be excluded from the asset limit determination pursuant to BEM 400. It appears that the Department made no inquiries with regard to the ownership structure of the parcel of property in question and the potential that the parcel of property is unavailable and excluded prior to denying the application. This was contrary to Department policy and was therefore improper and incorrect. BEM 400, BAM 130.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was incorrect in the denial of Claimant's MA application, and it is ORDERED that the Department's decision in this regard be and is hereby REVERSED. Claimant's Medicaid application shall be reinstated and reprocessed going back to the date of application. Verifications regarding the ownership interest in the parcel of real estate in question and the availability of the parcel to the Claimant shall be requested.



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

Date Signed: 5/20/11

Date Mailed: 5/20/11

201120353/AM

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.

AM/sm

cc:

[REDACTED]

Wayne/ DHS (82)/ 1843

[REDACTED]