

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2011-23489

[REDACTED]

**ADMINISTRATIVE LAW JUDGE:** [REDACTED]

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37. This case was originally heard on [REDACTED]. A decision was issued on [REDACTED]. The Administrative Law Judge's decision was appealed to the [REDACTED] and the matter was remanded back to this Administrative Tribunal on [REDACTED] for rehearing. After due notice, a telephone rehearing was held on [REDACTED]. The Petitioner (Claimant) did not appear, but was represented by attorney [REDACTED] appeared as witness on behalf of the Petitioner. The Respondent (Department) was represented by Assistant [REDACTED]. [REDACTED] appeared as witness on behalf of the Department. The record was left open for the filing of post-hearing briefs with the following schedule: Petitioner's brief was due on [REDACTED] and Respondent's brief was due on [REDACTED]. No brief was received from Petitioner. Respondent's brief was received timely.

**ISSUE**

Did the department properly determine the claimant was excess assets when it processed claimant's [REDACTED] Medical Assistance (MA) and retro MA application?

**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 [REDACTED], Petitioner applied for MA and retro MA (for the months of [REDACTED]).

2. The department determined the Petitioner and her husband were excess assets to qualify for ongoing and retro MA and mailed notices to Petitioner.
3. The Petitioner submitted a hearing request on this issue on [REDACTED].
4. On [REDACTED], DHS Local Office staff sought clarification from Central Office policy staff as to how much of the Petitioner's spouse's Thrift Savings Retirement account would be countable as an asset. They were advised to count the amount that was actually available to the Petitioner's spouse, which was the amount of his contributions.
5. The Petitioner's MA and retro MA eligibility was re-evaluated using the new figures. Petitioner was still found to be excess assets for MA and retro MA eligibility and was mailed notice.
6. The Administrative Law Judge (ALJ) held a hearing on [REDACTED] with a decision mailed on [REDACTED] and found she lacked jurisdiction to proceed with the hearing because the Claimant did not submit a hearing request within the required 90 days. In the alternative, the ALJ found that the claimant was properly found to be excess assets.
7. The Administrative Law Judge's decision was appealed to the [REDACTED] and the matter was remanded back to this Administrative Tribunal on [REDACTED] for rehearing.
8. The rehearing was conducted on [REDACTED] and the record was left open for post-hearing briefs with the following schedule: Petitioner's brief was due on [REDACTED] Respondent's brief was due on [REDACTED] [REDACTED] No brief was received from Petitioner. Respondent's brief was received timely.

### **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).<sup>1</sup>

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<sup>1</sup> At the time the action at issue in this case occurred, the Department's policy manuals were called Program Administrative Manual, Program Eligibility Manual and Program Reference Manual. They are now referred to as Bridges Administrative Manual, Bridges Eligibility Manual and Bridges Reference Manual.

The issue in this case is if Petitioner was asset eligible to be approved for MA and retro MA at the time of application, [REDACTED]. To be eligible for SSI-related MA, countable assets cannot exceed the applicable asset limit. PEM 400, p. 1. An asset is countable if it meets the availability test and is not excluded. PEM 400, p.1. Available means that someone in the asset group has the legal right to use or dispose of the asset. Assume an asset is available unless evidence shows it is not available. PEM 400, p. 6. Retirement plan values are noted to be the amount of money the person can currently withdraw from the plan. Deduct any early withdrawal penalty, but not the amount of any taxes due. Funds in a plan are not available if the person must quit his job to withdraw any money. PEM 400, p. 15. The asset limit for SSI-related MA, asset group of one is \$2000. PEM 400, p. 5.

The formula for asset eligibility is the value of the couple's countable assets for the month being tested, minus the "protected spousal amount." The protected spousal amount is the greatest of the following:

1. [REDACTED] effective [REDACTED]
2. One-half the initial asset assessment amount, but not more than [REDACTED] effective [REDACTED].
3. The amount determined in a hearing per PAM 600.
4. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:
  - Pay support to the community spouse, and
  - Transfer assets to the community spouse for the support of the community spouse or a family member. PEM 402, pp 7-8.

The only dispute in this case is the valuation of the Petitioner's spouse's thrift savings retirement account. The department initially valued the entire amount of [REDACTED] in the asset assessment. However, upon receiving clarification from the department's policy unit, they changed the determination and included only [REDACTED] of the retirement account, which was the value of Mr. Wise's contributions closest to the snapshot date of [REDACTED], as indicated by the letter from Thrift Savings Plan dated [REDACTED].

This same letter indicates agency contributions and employer match contributions are not available to a participant until they either separate from Federal service or reach age 59 ½. It is undisputed that the Petitioner's spouse had not separated service or reached age 59 ½. Therefore, clearly, the agency and employer match contributions were unavailable to the Petitioner's spouse and not a countable asset. However, the employee contributions were clearly available to the employee, so they were properly countable assets. Although the Petitioner argues that there was an early withdrawal penalty, no evidence of this penalty was provided to the department or this Administrative Law Judge. Thus, as policy dictates, the assumption is that the asset is fully available and is fully countable. This made Petitioner excess assets as of the application date for ongoing MA and retro MA coverage.

Petitioner's attorney indicated at hearing that he would argue that inclusion of Mr. Wise's retirement savings plan violated federal law. Petitioner was to address that issue in his closing brief, but failed to submit his brief to this Administrative Law Judge. However, this ALJ will note that in accordance with the Delegation of Hearing Authority, she does not have jurisdiction to "make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy."

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the Petitioner was excess assets when it processed claimant's [REDACTED] Medical Assistance (MA) and retro MA application.

Accordingly, the department's actions are **AFFIRMED**. It is **SO ORDERED**.

/s/

[REDACTED]  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

**NOTICE:** The law provides that within 30 days of receipt of the above Rehearing Decision and Order, the claimant may appeal it to the circuit court for the county in which he/she lives.

SLM/jk

cc:

[REDACTED]

MAHS