

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201124193  
Issue No: 2021  
Hearing Date: June 14, 2011  
St Joseph County DHS

**ADMINISTRATIVE LAW JUDGE:** Janice G. Spodarek

**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, an in-person hearing was held on June 14, 2011. Claimant was represented by [REDACTED]

**ISSUE**

Did the DHS properly process claimant's community spouse resource allowance and 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 June 2, 2010, claimant applied for MA.
2. Claimant's first date of entry into a nursing home (long-term care [LTC]) with a continuous 30-day period began on April 28, 2011.
3. The department calculated the community spouse resource allowance pursuant to an effective date of April 28, 2011.
4. Claimant has multiple assets in dispute. Among those included a change for a revocable funeral contract into an irrevocable contract. Numerous verifications were requested and re-requested throughout the application process.
5. On July 9, 2010, the DHS received the Asset Declaration Form. The department requested on numerous occasions for additional verification not initially delivered.

6. Claimant stipulated that her annuities were countable. The DHS nevertheless forwarded the annuities for a ruling as to whether they were countable to the policy unit with DHS delaying processing in the case.
7. On January 19, 2010, the DHS issued a denial notice indicating that claimant was denied MA due to excess assets.
8. Claimant does not dispute the assets as counted herein.
9. The department stipulated that it violated its 45 day standard of promptness.
10. Claimant's assets exceed the asset limit.
11. The department calculated the initial asset amount as [REDACTED] the protected assets for the community source allowance was [REDACTED].
12. As of the date of the administrative hearing, claimant has not spent down the assets.
13. Claimant reapplied on February 25, 2011 and was denied once again on May 18, 2011 due to excess assets.

### **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).

General asset policy and procedure is found primarily in BEM Item 400. The department indicated that the asset limit in this case exceeds \$2,000.

Policy with regards to community spouse of allowances where there is a community spouse and long-term care issues is found primarily in BEM Item 402.

Also applicable to the case herein, is policy found in Trusts—BEM item 401. This policy requires the department to forward any trusts and/or annuities to the policy unit to make a determination as to asset eligibility.

In this case, claimant stipulated from the onset that the annuities were countable assets. The department insisted it was required under its policy to forward the annuities to the policy unit. This Administrative Law Judge reviewed the policy and finds that the policy requires forwarding the same in order to make a determination as to whether the assets

were countable pursuant to the requirements in BEM Item 401. The department literally read its policy and forwarded the annuities and received a determination that they were countable resulting in the considerable delay in the processing of this case.

As the DHS followed its policy and procedure, this Administrative Law Judge cannot find error in that the DHS forwarded the annuities to the policy unit.

However, this case was delayed for a number of different reasons. As noted in the Findings of Fact, there were numerous verifications requested and re-requested. Claimant argues that claimant should prevail on the grounds that the department exceeded the 45 day standard of promptness. As noted in the Findings of Fact, the department stipulated that it did in fact exceed the standard of promptness. There were numerous reasons for this, including the worker simply being unavailable at times with over 700 cases; on vacation at times; requesting and re-requesting numerous verifications.

Having established that the standard of promptness was exceeded, the question becomes whether there is a remedy where there is such a violation. There is no remedy available where the standard of promptness is exceeded. It is generally viewed as a right without a remedy. As noted in the Findings of Fact, claimant did not spend down the assets as of the date of the administrative hearing. This Administrative Law Judge cannot find any eligibility where there would not otherwise be eligibility. There may be an opportunity for claimant to spend down the assets for up to one year pursuant to the policy in BEM Item 401. However, this was not before the undersigned Administrative Law Judge as an issue; the parties stipulated that no monies have been applied to spend down the assets. See BEM Item 401. This Administrative Law Judge cannot give claimant any more benefits where there would not otherwise be eligibility under these facts.

Claimant's attorney makes an alternative argument that fairness requires that she prevail. Claimant's argument is an equitable argument. It is a general principle of administrative law that Administrative Law Judges do not have equitable powers. Director Maua Corrigan's Delegation of Hearing Authority signed February 22, 2011 does not give Administrative Law Judges authority to overrule statutes, overrule promulgated regulations, or make exceptions to department policy:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

For these reasons, and for the reasons stated above, the department's actions must be upheld.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department correctly denied claimant LTC due to excess assets and,

Accordingly, the department's denial is hereby UPHELD.

/S/

Janice G. Spodarek  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: June 23, 2011

Date Mailed: June 24, 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.

JGS/db

cc:

