

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-34277  
Issue No: 2021  
Case No: [REDACTED]  
Hearing Date:  
July 21, 2011  
Alpena County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

**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 telephone hearing was held on July 21, 2011. The claimant was represented by attorney [REDACTED]. Claimant and his wife, [REDACTED] were present and provided testimony.

**ISSUES**

Did the department properly determine the claimant was excess assets for MA in August, 2010?

**FINDINGS OF FACT**

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

1. The claimant submitted an Assets Declaration Patient and Spouse (DHS-4674) form and an application for MA on August 30, 2010. (Department Exhibit 25 – 30)
2. The department computed the Initial Asset Assessment (IAA) in the amount of \$ [REDACTED]. The Protected Spousal Amount was computed as \$ [REDACTED] (Department Exhibit 7 – 12)
3. Submitted with the application (and date stamped by the department) was a letter from the claimant's attorney that indicated certain changes had occurred since August 1, 2010 (when the asset documentation was

gathered) and the application date of August 30, 2010. Among the reported changes was a “solely for the benefit of Irrevocable Trust” established on August 26, 2010 for the sole benefit of [REDACTED]. The trust was funded in the amount of \$ [REDACTED] by transferring two certificates of deposit and [REDACTED] IRA into the name of the Trustee. The trust instrument was attached to the letter. (Department Exhibit 31 – 32)

4. The department found the claimant to be excess assets for the months of August and September, 2011 and issued a Notice of Case Action (DHS-1605) on March 2, 2011 that indicated this. (Department Exhibit 3 – 6)
5. The claimant submitted a hearing request on April 21, 2011.

### 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Assets must be considered in determining eligibility for FIP, SDA, RAPC, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Care taker Relative (G2C), SSI-related MA categories and AMP. 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. The applicable asset limit for SSI-related MA is \$ [REDACTED] BEM 400.

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse. Do an initial asset assessment when one is requested by either spouse, even when an MA application is **not** made. BEM 402. An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989. BEM 402.

The DHS-4574-B, Assets Declaration, is used to request an initial asset assessment. Notify both spouses in writing of the results of the initial asset assessment whether it is done prior to, or at the time of, an MA application. Use the following:

- DHS-4588, Initial Asset Assessment Notice, and
- DHS-4585, Initial Asset Assessment and Asset Record.

The above notices inform the couple of the:

- Total amount of their countable assets, and
- The protected spousal amount, and
- Their hearing rights.

Send copies of all verifications or other documents used in making the initial asset assessment along with each copy of the notices. BEM 402.

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the **greatest** of one-half the initial asset assessment amount (although no greater than \$ [REDACTED]), the amount determined in a hearing, the amount of assets transferred to the community spouse by the client pursuant to a court order, or [REDACTED]. BEM 402.

A completed, signed DHS-4574-B is used to request an initial asset assessment. All such requests, whether or **not** in conjunction with an MA application, must be registered and disposed of.

The determination of asset eligibility is a multi-step process.

1. Do INITIAL ASSET ASSESSMENT.
2. Determine PROTECTED SPOUSAL AMOUNT.
3. Determine couple's (his, her, their) countable assets for month being tested.
4. Subtract PROTECTED SPOUSAL AMOUNT from the couple's assets.
5. Compare result from step 4 to client's asset limit to determine if asset eligibility exists for month being tested.

Repeat steps 3, 4 and 5 for each month tested. For applicants, test each past month, including retro MA months, and the processing month. For MA recipients, test only the first future month.

The formula for asset eligibility is:

- The value of the couple's (his, her, their) countable assets for the month being tested
- **MINUS** the protected spousal amount

- **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in BEM 400 for the category(ies) being tested. BEM 402.

In this case, the claimant and his spouse had assets valued at \$ [REDACTED] for the Initial Asset Assessment (IAA). Half the IAA would be \$ [REDACTED] which would be the protected spousal amount, as it is the highest figure allowed by department policy.

Asset eligibility is determined by taking the value of the couple's assets for the month being tested and subtracting the protected spousal amount. This results in the client's countable assets.

The claimant's attorney contends that the department had been made aware that there had been transfers of countable assets (prior to application) to enable the claimant to be asset eligible for MA purposes. The claimant's attorney points to the letter and spreadsheet that were submitted with the claimant's application (date stamped as received by the department on August 30, 2010) as providing the information and documentation to show the assets had been transferred and were no longer countable for the months in question.

The department admits that the case went between several workers and was not processed within the standards of promptness (SOP). It is also clear that the department had the necessary information/documentation to determine the transfer of the assets, but failed to take notice of this information. If there was any further need for verification, a Verification Checklist (DHS-3503) should have been mailed to the client/attorney. The department admits that this did not occur.

Therefore, this Administrative Law Judge finds that the department improperly denied the claimant's MA application for excess assets.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant was excess assets for MA in August and September, 2010.

Accordingly, the department's determination is REVERSED. The department shall:

1. Initiate reinstatement and reprocessing of the claimant's August, 2010 MA application.
2. Make a new determination of the claimant's asset eligibility.

3. Mail the claimant and his representative written notice of the new determination.

SO ORDERED.

Suzanne

/s/

L. Morris  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: September 20, 2011

Date Mailed: September 20, 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.

SLM/alc

cc:

