

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201146472
Issue No: 2020
Case No: [REDACTED]
Hearing Date: September 7, 2011
Branch County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 September 7, 2011. The claimant's representative [REDACTED], an attorney, appeared and provided argument and testimony.

ISSUES

Whether the department properly denied the claimant's Medical Assistance (MA) application 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. The claimant applied for MA benefits on May 27, 2011.
2. Based upon verifications obtained by the department, it was determined that the claimant had countable assets in the amount of [REDACTED]. (Department Exhibits 2, 3, and 4).
3. Based upon the asset valuation, the department denied the claimant's application due to him being over the allowable asset limit. (Department Exhibit 1).
4. The claimant filed a request for hearing on July 21, 2011.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1)

Clients have the right to contest a department decision affective eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

In order to be eligible for MA benefits, an individual must meet the prescribed asset limits. BEM 400. For SSI related MA, the asset limit for a group size of one is \$2,000.00. Department policy defines assets as follows:

Assets Defined

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles). BEM 400.

Additionally, policy states that in order for an asset to be countable, it must be available and not excluded. Available mean that someone in the asset group has the legal right to use or dispose of the asset. BEM 400.

The case at hand turns on whether or not the claimant's assets were available to him. The assets that the department counted in determining the claimant's eligibility are his bank account at [REDACTED], his account at [REDACTED], and his [REDACTED].

Counsel argues that the claimant had actually assigned the funds in his bank account at Citibank (with countable funds in the amount of [REDACTED]) to the nursing home in partial satisfaction of past due balances that the claimant owed to the home. An affidavit has been provided (see Department Exhibit 6, page 1 and Claimant Exhibit 1) which Counsel claims effectuated an assignment from the claimant to the nursing home of the funds in question. The issue to be resolved, according to policy, is whether or not the

claimant retained the legal right to use or dispose of the asset in question; specifically the claimant's bank account at [REDACTED].

Counsel has argued that the claimant's intent was to assign the assets contained in said account to the nursing home at the time the affidavit was signed. Counsel has cited authority stating that the expression of the intent of the assignor governs the assignment and that an assignment may be oral or in writing. While the authority cited by Counsel is duly noted, this Administrative Law Judge must first and foremost determine the validity of the assignment, and in turn, if the department acted properly in accordance with policy based on the information the department was presented at the time of the decision.

In addressing the issue of the validity of the assignment, the affidavit of May 27, 2011 must be examined. The original affidavit presented to the department states in paragraph 6: "I also assign all right to [REDACTED] money to [REDACTED] of [REDACTED] r in partial satisfaction of outstanding charges on account." (Department Exhibit 6, page 1). At the hearing, Counsel stated that the portion of this paragraph [REDACTED], was a typo and should have read "my" instead. Counsel did provide an amended version of the affidavit which has the term "my" substituted for [REDACTED]" (Claimant's Exhibit C). The substitution consists of the phrase [REDACTED]" being crossed out and the phrase "my" hand written in above with Counsel's initials and a date of September 7, 2011. Therefore, it does not appear that the department was supplied with the corrected version, and in fact that the affidavit was not corrected until September 7, 2011. At the time the department made its decision, the only affidavit executed on May 27, 2011 it had to consider was the affidavit contained at Department Exhibit 6, page 1.

Furthermore, the Michigan Court of Appeals has held that in order for an equitable assignment to be proper, the property to be assigned must be sufficiently identified. In *Warren Tool Company v. Stephenson*, 11 Mich. App. 274 (1968), the Court stated in relation to equitable assignments and equitable liens, "that an agreement indicating an intention that identified property shall secure a debt is sufficient." *Id.* at 289. In the case at hand, even assuming the department had received the amended affidavit where the claimant states that all his right to *his* money is assigned to Laurels, the affidavit does not sufficiently identify the property the claimant is referring to so that the department could have properly ruled out the bank account in question as an asset. The bank account in question is not referred to in this affidavit by account number, value, or even by institution. By stating "my money", the claimant could have referred to several different things; the money in his pocket at the time, proceeds from an investment to be sold, or money in a shoebox at home. Therefore, because the bank account used by the department to render the claimant ineligible due to excess assets was not properly identified as being assigned in the affidavit submitted by the claimant, that bank account was not properly assigned and the claimant still retained the right to use or dispose of the funds in the account.

Additionally, there has been no evidence presented that shows that the claimant was not able to access his account even after the affidavit was signed. No evidence has

been presented to show that the claimant was taken off the account as a signatory or payee, or to show that ownership of the account was transferred. Accordingly, the claimant would still have had the right to withdraw funds from his account or write checks off that account. The claimant would then still have had the right to use or dispose of the assets in that account. This argument would also apply to the claimant's stocks through [REDACTED] (with countable funds in the amount of [REDACTED]). Although the affidavit speaks to the claimant's assignment of his right to the value of those stocks, there has been no evidence presented to show that ownership of the stocks had changed or that any instrument was drafted that would prevent the claimant from accessing those stocks.

Based upon the above findings, this Administrative Law Judge finds that the department properly included the funds in claimant's bank account at [REDACTED] in the amount of [REDACTED] and the funds in the claimant's [REDACTED] in the amount of [REDACTED] in its determination of the claimant's MA eligibility and in turn properly determined that the claimant was ineligible due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy in denying the claimant's MA application based on excess assets.

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

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 3, 2011

Date Mailed: October 4, 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 60 days of the filing of the original request.

2011-46472/CSS

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

CSS/cr

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