

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-36582  
Issue No: 2000, 2021  
Case No: [REDACTED]  
Hearing Date:  
August 10, 2011  
Clare 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 August 10, 2011. The claimant is deceased. The claimant's daughter, [REDACTED] appeared and provided testimony.

**ISSUES**

1. Whether claimant's daughter has the legal authority to act as an authorized hearings representative in this case?
2. Did the department properly deny 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 executed a Durable Power of Attorney (POA), giving her daughter, [REDACTED], POA powers on March 29, 1989.
2. On November 29, 2010, the claimant's daughter submitted a Medicaid application (patient of nursing home) DHS-4574 for her mother.
3. On December 26, 2010, the claimant passed away.

4. On March 24, 2011, the department mailed the claimant's daughter a Notice of Case Action (DHS-1605) that indicated the claimant was denied MA due to excess assets.
5. The claimant's daughter submitted a hearing request on June 3, 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).

Department policy states:

#### **FIP, SDA, RAPC, LIF, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, SSI-Related MA, and AMP**

Assets must be considered in determining eligibility for FIP, SDA, RAPC, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA categories and AMP.

#### **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).

#### **Overview of Asset Policy SSI-Related MA**

All types of assets are considered for SSI-related MA categories. 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.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date.

#### **SSI-Related MA Asset Limit**

### **SSI-Related MA Only**

For Freedom to Work (BEM 174) the asset limit is \$75,000. IRS recognized retirement accounts (including IRA'S and 401(k)'s) may be of unlimited value.

For Medicare Savings Programs (BEM 165) and QDWI (BEM 169) the asset limit is:

- \$6,680 for an asset group of one.
- \$10,020 for an asset group of two.

For all other SSI-related MA categories, the asset limit is:

- \$2,000 for an asset group of one.
- \$3,000 for an asset group of two.

The initial issue that must be addressed is whether claimant's daughter has a right to represent the deceased claimant as an authorized hearing representative. There is evidence in the record that Claimant's daughter possessed a valid Durable Power of Attorney, which authorized her to make decisions on claimant's behalf during her lifetime. However, the Power of Attorney would have been revoked on the date of claimant's death, which was December 26, 2010. Thus, for purposes of this hearing, claimant's daughter is not an authorized hearings representative for claimant.

Claimant's daughter was not an authorized representative on the date that the request for a hearing was filed and she can not become an authorized representative for her mother, in the absence of a probate court order. An authorization to represent a person may be revoked at any time by the person who gave the authorization. When the person who gave the authorization dies, the authorization ends at the time of the death. A dead person can neither give nor revoke, nor affirm authorization. There is no such thing as authorization to act for a dead person. After death, the person does not exist as a legal entity so no one can represent the person. This is Michigan law, MCL 700.497 and MCL 700.5504.

Under Michigan law, all rights and authority granted by a Power of Attorney end at the death of the principal.

- The Michigan Probate Court retains sole and exclusive jurisdiction over decedent estates. MCL 700.1302.

- . A patient advocate designation ends with the death of a principal. MCL 700.5510.
- . A Power of Attorney designation ends with knowledge of death of the principal. MCL 700.5504.

After death, the principal no longer exists as a separate legal entity: consequently, an estate must be created to handle the remaining business and financial concerns outstanding at the time of his or her death. Only the probate court can create a decedent's estate and appoint a personal representative, special fiduciary or temporary personal representative to act on behalf of that estate, which includes pursuing potential gain from the Medicaid (MA) program, pursuant to an action pending at the time of the principal's death. For the Medicaid program only, a widow or widower may act as a representative on the Medicaid plan without probate court authorization. While the claimant testified that she was named executor of her mother's estate through her mother's will, claimant's daughter could not provide a probate court order or court-issued letter of authority naming her or another person as a personal representative of the estate. Therefore, an administrative hearing must be DISMISSED as the claimant's daughter does not have authorization to represent the deceased.

However, even assuming the claimant's daughter had the proper authority to represent the deceased claimant, the department's actions would be upheld. The claimant's asset limit (group size of one for SSI-related MA) would be \$ [REDACTED] BEM 400. The claimant had a countable bank account balance of \$ [REDACTED]. The claimant also owned a life insurance policy that had a cash value of \$ [REDACTED] (face value of [REDACTED]). This gave the claimant more than [REDACTED] in assets.

The claimant's daughter testified that she did not request to cash in the life insurance policy until December 20, 2010 and that it was not actually cashed in by the carrier of the policy ([REDACTED]) until January 13, 2011. The claimant's daughter admitted that the claimant did have assets that totaled more than the applicable \$ [REDACTED] limit. The claimant's daughter testified that she had had surgery and was unable to surrender the life insurance policy while recuperating. However, this does not change the fact that the client was excess assets during November and December, 2010. Therefore, the department properly denied the application due to excess assets.

