

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-26067
Issue No.: 2021
Case No.: [REDACTED]
Hearing Date: March 12, 2012
County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in person hearing was held on March 12, 2012, from Clinton Township, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was ineligible for Medical Assistance (MA) based upon excess assets?

FINDINGS OF FACT

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

1. On April 6, 2004, a Quit Claim Deed was executed granting a joint tenancy with rights of survivorship to the Claimant, Claimant's spouse, Claimant's daughter and Claimant's son in-law.
2. On October 12, 2011, an application for MA was filed on behalf of Claimant.
3. On November 29, 2011, the Department sent a notice of case action denying Claimant's application for MA based on excess assets.

4. On December 12, 2011, Claimant's attorney requested a hearing protesting the denial of MA based upon excess assets.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

In the instant case, the Department counted a second home jointly owned by Claimant, his daughter and his son in-law. The Department determined the value of the second residence to be \$26,200 (the State equalized value of the home according to tax records). The evidence presented at hearing demonstrated the residence in question is a vacation home, and none of the joint tenants are currently using it as a residence. Claimant's daughter submitted a notarized statement indicating her refusal to sell the property and her husband submitted a separate notarized statement indicating his refusal to sell the property.

The Department witness from the Department of Community Health (DCH) testified the Social Security Act (SSA) is the basis for State Medicaid policy. According to this witness, the primary residence is excluded and the SSA Program Operations Manual System (POMS) counts a second residence unless it would be considered an undue hardship. Specifically, an undue hardship would exist if the co-owner uses the property as a primary residence; the sale would force the co-owner to move and have no other readily available housing. In the current case, the home is not a residence for any of the joint tenants.

The Department's witness from DCH also pointed to the State Plan which indicates when an unsalable property is not a counted resource. DCH specifically cited STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT Medical Assistance Program, section 2.6. The State Plan indicates two possible ways a property is considered unsalable: a) two knowledgeable sources state the property is unsalable due to a specified condition, or b) an actual sale attempt is made and no reasonable offer to purchase has been received. This witness for the Department indicated her belief that none of the policy or State Plan exceptions would apply to this particular case.

Claimant's attorney asserts the property is not available due to a legal impediment. All joint tenants must be in agreement to sell the property in order for the property to be considered an asset. Claimant's attorney believes the Department's policy is more restrictive than Federal law in regards to excluding a second home's value from consideration. He specifically alleges the Department policy fails to allow for the same exclusion of property as an asset based upon a legal impediment as allowed by the SSA POMS.

Claimant, through his attorney, requested a recommended decision be drafted by this Administrative Law Judge to consider the alleged conflict between Federal law and Department policy. Claimant's attorney cited the following policy in support of his request.

HEARING DECISIONS

All Programs

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision **unless**:

- The ALJ believes that the applicable law does **not** support DHS policy.
- DHS policy is silent on the issue being considered.

In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision.

For **MA client eligibility only**, if a presiding ALJ believes an MA policy, at issue in a given case, does **not** conform with federal or state law, all of the following occur:

- The ALJ issues a recommended decision within 20 days of the hearing date.
- Copies of the decision are sent to the client, AHR, DHS Policy Hearing Authority, DHS local office and Chief Executive Officer (CEO) of DCH-MSA, all of whom may file exceptions with the ALJ.
- The recommendation and exceptions are forwarded by the DHS Bureau of Legal Affairs to the DCH CEO through the DCH Administrative Tribunal.
- The DCH CEO makes the final decision regarding all recommended decisions.

MAHS mails the final hearing decision to the client, the AHR and the local office. In most cases, the client has the right to appeal a final decision to Circuit Court within 30 days after that decision is received.

BAM 600, p. 29.

This Administrative Law Judge finds the Department failed to follow policy found in BEM 400. This Administrative Law Judge is able to determine the facts based only on evidence introduced at the hearing, draw a conclusion of law, and determine the Department failed to appropriately follow policy; therefore, an entry of a final decision is appropriate.

Under BEM 400, the policy cited by the Department in support of the denial of the Claimant's application, this Administrative Law Judge found the Department failed to

properly apply the policy to the Claimant's application. Specifically, BEM 400, pp. 9-10, states the following:

JOINTLY OWNED ASSETS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA AMP and FAP

Jointly owned assets are assets that have more than one owner.

Note: For FTW determinations jointly owned assets are considered to belong to the initial person.

An asset is unavailable if an owner cannot sell or spend his share of an asset:

- Without another owner's consent, and
- The other owner is not in the asset group, and
- The other owner refuses consent.

Exception 1: In SSI-related MA, when ownership is shared by an SSI-related child and his parent(s) and parental asset deeming applies, refusal to sell by either the child or the parent(s) does not make an asset unavailable.

As the policy above indicates, the refusal of the Claimant and/or his daughter to sell a jointly owned property would not make the property an unavailable asset. The policy specifically provides an SSI-related child's refusal to sell fails to make the property unavailable. However, the Department failed to consider that Claimant not only quit claimed the property to his SSI-related child and himself but also to his son in-law, who is not an SSI-related child. Claimant's son in-law indicated he objected to the sale of the property in question. Therefore, the property in question cannot be considered an available asset.

BEM 400, pp. 6-7, indicates the following:

AVAILABLE

FIP, SDA, LIF, G2U, G2C, SSI-Related MA AMP and FAP

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset.

This does **not** apply to trusts. There are special rules about trusts. See **Trusts** in this item for FIP, SDA, AMP and FAP. See BEM 401 for MA trust policy.

Assume an asset is available unless evidence shows it is **not** available.

An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:

- A person's guardian dies and a new guardian has **not** been appointed yet.
- A court decides a person needs a guardian, but has **not** appointed one yet.
- A person is unconscious and his family asks the court to appoint a guardian.

Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. See Jointly Owned Assets, Non-Salable Assets and Victims of Domestic Violence [in this item](#).

As indicated by the policy above, the asset must be available in order to be considered. Claimant has presented sufficient evidence to demonstrate the property in question is not, in fact, available. Since the property is unavailable, the Department cannot count it as an asset.

DECISION AND ORDER

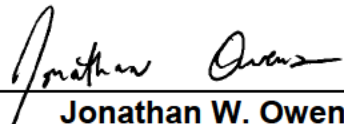
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly when . did not act properly when it denied the Claimant's application for MA based upon excess assets.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a review of Claimant's application dated October 12, 2011;
2. Re-process Claimant's application for MA without considering Claimant's jointly owned property as an asset;

3. Issue a decision notice in writing to Claimant and his representative.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 27, 2012

Date Mailed: March 27, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc:

