

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201237321
Issue No.: 2020; 3021
Case No.: [REDACTED]
Hearing Date: April 30, 2012
County: Macomb (12)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, a telephone hearing was held on April 30, 2012, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]

[REDACTED] Participants on behalf of Department of Human Services (Department) included [REDACTED], Eligibility Specialist, and [REDACTED], Assistant Attorney General.

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Child Development and Care (CDC)? |
| <input type="checkbox"/> Direct Support Services (DSS)? | |

FINDINGS OF FACT

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

1. Claimant applied for benefits received benefits for:
 Family Independence Program (FIP). Adult Medical Assistance (AMP).
 Food Assistance Program (FAP). State Disability Assistance (SDA).
 Medical Assistance (MA). Child Development and Care (CDC).
 Direct Support Services (DSS).
2. On December 12, 2011, the Department
 denied Claimant's application closed Claimant's case
due to excess assets.
3. On December 12, 2011, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure.
4. On January 3, 2012, Claimant filed a hearing request, protesting the
 denial of the application. closure of the case.

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 1999 AC, R 400.3101 through Rule 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 1999 AC, R 400.3001 through Rule 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 AACRS, R 400.3151 through Rule 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 1999 AC, R 400.5001 through Rule 400.5015.

Direct Support Services (DSS) is administered by the Department pursuant to MCL 400.57a, *et. seq.*, and Mich Admin Code R 400.3603.

Additionally, the Department denied Claimant's August 12, 2011, application for FAP and MA benefits because the value of Claimant's assets, specifically the value of Claimant's rights under the Trust, exceeded the asset limit under the MA and FAP programs. The FAP asset limit is \$5000. BEM 400. The asset limit for Group 2 FIP-related MA is \$3000. BEM 400.

MA Application

In this case, the Trust was created by Claimant's grandfather and funded by the grandfather's assets at his death. Because Claimant was not the individual whose resources were transferred to the Trust, the Trust was not a Medicaid Trust and the Department properly characterized the Trust as an "Other Trust" under BEM 401.

The Department concluded that the value of Claimant's portion of the Trust exceeded the MA asset limit. Only the value of assets that are available to a client are considered in determining whether the value of the asset exceeds the MA asset limit. BEM 401. The trust principal for a trust characterized as an "Other Trust" is considered an available asset of the person who is legally able to (i) direct use of the trust principal for his needs and (ii) direct that ownership of the principal revert to himself. BEM 401.

The trustee of the Trust, who was appointed by the court, testified that the Trust, which was created by Claimant's grandfather in [REDACTED] created a marital trust upon the grandfather's death for the benefit of Claimant's step-grandmother. In the event that there were still funds in the marital trust at the time Claimant's step-grandmother died, such funds become part of the residuary trust and Claimant, as the sole child of his deceased mother, would be entitled to one-sixth of these funds.

In finding that Claimant's interest in the Trust was valued at over \$53,000, the Department focused on a [REDACTED] settlement agreement between Claimant and the other Trust beneficiaries. The trustee explained that pursuant to this settlement agreement, a distribution totalling \$961,949.60 was made from the principal then in the residuary trust

to each of the beneficiaries of the Trust, with each beneficiary receiving 1/6 of the distribution. Claimant's portion totalled about \$160,000. Under the terms of the agreement, Claimant was entitled to 1/3 of his distribution when he turned 21, 1/2 of the remaining principal when he turned 25, and the remainder when he turned 30. The trustee testified that, despite the terms of the settlement, Claimant received the bulk of his distribution in [REDACTED] and the remainder was paid out to him in \$600 installments, the last being in [REDACTED]. Because the settlement agreement resulted in the early distribution of the funds then in the residuary trust, these funds were no longer in the Trust and could not be used to establish a value for the Trust.

The trustee further explained that there were, as of the date of the hearing, no funds in the residuary trust, and that for the residuary trust to be funded, two conditions must be satisfied: (1) the step-grandmother must be deceased and (2) there must be funds remaining in the marital assets to fund the residuary trust. The terms of the Trust, as amended in 2006, are consistent with the trustee's testimony.

Under these facts, Claimant could not direct use of the principal in the residuary trust for his needs or direct that ownership of the principal revert to himself. As such, the principal in the residuary trust is not an available asset to Claimant. Furthermore, because there are currently no funds in the residuary trust, the current value of the residuary trust is \$0. Thus, the Department did not act in accordance with Department policy when it found that the value of Claimant's rights under the Trust exceeded the MA asset limit and denied Claimant's MA application on this basis.

FAP Application

For determining the value of a trust for FAP cases, the Department must also consider whether the trust principal and any income retained by the trust are available. The trust principal and any income retained by the trust are considered unavailable for FAP asset valuation purposes if all the following conditions apply:

- The trust arrangement is not likely to end during the benefit period.
- No asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period.
- The trustee administering the trust is one of the following:
 - A court or an institution, corporation or organization not under the direction of ownership of any asset group member.
 - An individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary.
- Investments made on behalf of the trust do not directly involve or benefit any business or corporation under the control or direction of an asset group member.
- The funds in the irrevocable trust are one of the following:
 - Established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary.
 - Established from funds of a person who is not a member of the asset group.

BEM 400.

As discussed above, Claimant has no control over the residuary trust and, as of the hearing date, there were no funds in this trust. Claimant's future rights in the residuary trust were subject to the death of Claimant's step-grandmother and the existence of funds in the marital trust to fund the residuary trust. While the terms of the settlement agreement indicated that Claimant would be entitled to additional funds from the Trust upon his [REDACTED] birthday, which would occur in [REDACTED] the trustee testified that Claimant had already been paid out the full amount of benefits he was entitled to receive pursuant to the settlement agreement. Further, because Claimant's [REDACTED] birthday was beyond the one-year FAP benefit period applicable to Claimant's August 12, 2011, FAP application, the fact that the terms of the settlement agreement indicated that he was entitled to benefits in the future would not render those funds available to Claimant within the one-year benefit period. Thus, the Department did not act in accordance with Department policy when it denied Claimant's FAP application on the basis that the value of his interest in the Trust exceeded the FAP asset limit.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly denied Claimant's application improperly denied Claimant's application
 properly closed Claimant's case improperly closed Claimant's case

for: AMP FIP FAP MA SDA CDC DSS.

DECISION AND ORDER

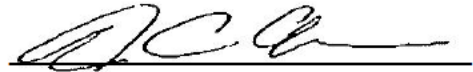
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department
 did act properly. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA CDC DSS decision is AFFIRMED REVERSED for the reasons stated above and 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. Reregister Claimant's August 12, 2011, FAP and MA application;
2. Begin reprocessing the application in accordance with Department policy and consistent with this Hearing Decision;
3. Issue supplements for any FAP and/or MA benefits Claimant was eligible to receive but did not from August 12, 2011, ongoing;

4. Notify Claimant in writing of its decision in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 8, 2012

Date Mailed: May 8, 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

ACE/cl

cc:

