

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-45598
Issue No: 2011
Case No: [REDACTED]
Hearing Date: September 26, 2012
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 September 26, 2012. Claimant's daughter and guardian appeared and testified on her behalf. Claimant is deceased as of August 18, 2012. Claimant's daughter was represented at the hearing by [REDACTED]. There has been no probate court ruling that claimant's daughter may represent her in this matter.

ISSUES

1. Whether claimant's daughter can act as an authorized representative in this case?
2. Whether the Department of Human Service (the department) properly denied claimant's application for Medical Assistance based upon its determination that claimant possessed 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. Claimant was a Medical Assistance Long Term Care benefit recipient. Her case was scheduled for review in April 2012.
2. The department caseworker processed the review application and determined that claimant was co-owner of five real properties besides her exempted Homestead.

3. On April 3, 2012 the department caseworker generated a budget and denied claimant's application for Medical Assistance based upon excess assets because of her possession of the five properties and lowest bank account asset balance of \$ [REDACTED]
4. On April 3, 2012, an application eligibility notice was generated and sent to claimant stating that Medical Assistance benefits were denied by the Medical Review Team.
5. On April 5, 2012 and April 26, 2012, claimant's daughter filed a request for a hearing to contest the department's negative action.
6. Claimant died on August 18, 2012.

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 or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. 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 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).

ISSUE #1

Whether claimant's daughter can act as an authorized representative in this case?

In the instant case, claimant's daughter is no longer an authorized hearing representative for claimant. Claimant's daughter was an authorized hearing representative on the date that claimant filed the request for a hearing and but is no longer an authorized representative for her mother. An authorization to represent is a form of a power of attorney. When a person who gave the authorization dies, the power of attorney ends. After death, the person does not exist as a legal entity, so no one can represent the person. However, if a person dies while the application is pending, the application should be processed. An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a representative of the estate. A court, agency or guardian **legally** responsible for a client

must be identified as an authorized representative (AR) by Type on Bridges. (BEM Item 110, page 9)

Michigan compiled laws section 700.5510 states that a patient advocate designation is revoked by the patient's death.

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.

An estate of a dead person may be created to handle the remaining business or financial concerns that were outstanding at the time of the person's death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a personal representative of the estate. For the Medicaid program only, a (spouse) widow or widower may act as a representative on the Medicaid plan without probate court authorization. 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.

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. Matter of estate of *Breas Bois*, 140 Mich App; 364 NW2d 702 (1985)(which has not been overturned) states explicitly that a creditor of decedent who dies intestate is not an interested party entitled to be appointed as personal representative of an estate.

An estate of a dead person may be created to handle the remaining business or financial concerns that were outstanding at the time of the person's death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a personal representative of the estate. For the Medicaid program only, a widow or widower may act as a representative on the Medicaid plan without probate court authorization. Neither claimant's daughter nor Attorney David Shaltz could not provide a probate court order or court-issued letter of authority naming them as a personal representative of the estate at any time relevant to the application process. Therefore, the request for an administrative hearing must be DISMISSED.

An authorized hearings representative is the person who stands in for or represents the client in the hearings process and has the legal right to do so. This right comes from one of the following sources:

- . written authorization, signed by the client, giving the person authority to act for the client in the hearings process.
- . court appointment as a guardian or conservator
- . the representative status as a legal parent of a minor child
- . the representative status of an attorney at law for the client, and

For MA only:

- . the representative status as the client's spouse or the deceased client's widow or widower, only when no one else has authority to represent the client's interests in the hearings process. An authorized hearing representative has no right to a hearing, but rather exercises the client's right. Someone who assists, but does not stand in for or represent the client in the hearings process need not be an authorized hearing representative. Stands in for means the authorized hearing representative does whatever the client could do if the client were not represented. (BPG Glossary, p. 4)

In the instant case, claimant's daughter is no longer an authorized representative of claimant, nor an authorized hearing representative of claimant. Therefore, based upon the fact that the claimant is deceased and was deceased as of August 18, 2012, the hearing request must be dismissed.

ISSUE #2

Whether the Department of Human Services (the department) properly denied claimant's application for Medical Assistance based upon its determination that claimant possessed excess assets?

Assets must be considered in determining eligibility or SSI related categories. Assets mean cash, any other personal property and real property. (BEM, Item 400 Page 1). Countable assets cannot exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program but not for another program. (BEM Item 400, Page 1). The department is to consider both of the following to determine whether and how much of an asset is countable: An asset is countable if it meets the availability test and is not excluded. The department is to consider the assets of each person in the asset group. (BEM, Item 400, Page 1). An asset eligibility exists when the asset groups countable assets are less than or equal to the applicable asset limit at least one day during the month being tested. (BEM, Item 400, Page 4). An application does not authorize MA for future months if the person has excess assets on the processing date. The SSI related MA asset limit for SSI related MA categories that are not medicare savings program or QDWI is \$2,000.00 for an asset group for one person and \$3,000.00 for an asset group of 2 people. BEM, Item 400 Page 5. An asset must be available to be counted. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM, Item 400, Page 6. The department is to assume an asset is available unless the evidence shows that it is not available. Availability might be affected by joint ownerships and efforts to sell or the possibility of domestic violence. BEM, Item 400, Page 6.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that claimant's daughter is neither an authorized representative nor an authorized hearing representative for purposes of this case. The department appropriately determined that claimant possessed in excess of \$2,000 in countable available assets.

Accordingly, the hearing request is hereby **DISMISSED**. The department's decision to deny claimant's application based upon excess assets is **AFFIRMED**. So ORDERED

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 24, 2012

Date Mailed: October 25, 2012

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.

LYL/jk

cc:

