

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-46739
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 31, 2012
County: Bay

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 May 31, 2012, at the Bay County DHS office. Participants on behalf of Claimant included [REDACTED] of [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly deny Claimant's MA eligibility based on 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 January 17, 2012, Claimant applied for MA and Retro-MA. (Department Exhibits 1-3).
2. On March 2, 2012, the department mailed Claimant a Notice of Case Action denying her application for due to excess assets.
3. On April 12, 2012, Claimant's representative filed a request for a hearing contesting the department's actions. (Department Exhibits 19-23).

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 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.

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. BEM 400. Jointly owned assets are assets that have more than one owner. 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. BEM 400.

Count the entire amount unless the person claims and verifies a different ownership. Then, each owner's share is the amount he owns. BEM 400. Assume an asset is available unless evidence shows it is not available. BEM 400.

In this case, Claimant's mother has put Claimant and Claimant's sister on her bank accounts so they can write out checks and pay Claimant's mother's bills for her because Claimant's mother suffers from severe nerve damage, especially in her hands, and therefore is unable to use her hands.

Claimant submitted a letter signed by her mother and the department did not object to the authorship of the note or that it was in fact, from Claimant's mother. Claimant's mother indicated that she added Claimant and Claimant's sister to her accounts so they can withdraw money for her and be allowed to write checks to pay her bills. Claimant's mother was adamant that Claimant and Claimant's sister do not have permission to withdraw money from her accounts for any reason and they do not deposit money into her accounts. Claimant and Claimant's sister are only allowed to write out checks to pay Claimant's mother's bills and transfer money from Claimant's mother's savings account into Claimant's mother's checking account for her bills. Additionally, a review of Claimant's mother's checking account statements showed the same bills being paid month after month.

According to departmental policy, an asset must be available to be counted. Here, despite Claimant's name being on her mother's checking and savings accounts, according to Claimant and Claimant's mother, these monies were not available to Claimant and therefore cannot be counted. In addition, Claimant's mother's account statements were mailed to Claimant's mother's address, not Claimant's.

In accord with policy, the department is to assume the asset is available unless evidence shows it is not available. During the hearing, uncontroverted and uncontested evidence was presented that the funds in Claimant's mother's accounts were not available to Claimant. Hence, the department erred in counting Claimant's mother's assets as Claimants.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not act properly when it counted Claimant's mother's assets as jointly owned by Claimant.

Accordingly, the Department's MA decision is REVERSED and the department SHALL re-determine Claimant's eligibility based on her January 17, 2012, MA and Retro-MA application, disregarding any accounts of Claimant's mothers' that show Claimant as a joint owner.

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

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/13/12

Date Mailed: 6/13/12

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.

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.

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