

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 33248
Issue No.: 2020, 2021
Case No.: [REDACTED]
Hearing Date: June 7, 2012
County: Wayne County DHS 82

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 7, 2012, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant's Authorized Hearing Representatives [REDACTED] the owner of the long term facility, and the Claimant's spouse, [REDACTED]. The Claimant did not attend the hearing. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES and [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department properly deny the Claimant's application for Medical Assistance (MA) due to 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. The Claimant applied for Medical Assistance and retroactive Medical Assistance in November 9, 2011.
2. The Department issued an Initial Asset Assessment on December 15, 2011, which found the claimant had real estate valued at \$61,860.
3. The Department sent the Claimant a Notice of Case Action dated December 15, 2012 denying the application effective October 1, 2011 due to excess assets.

4. At the time of the application the Claimant was in a Long Term Care (LTC) facility.
5. At all time relevant to the filing of the application and its denial, the Claimant was the owner of a rental property.
6. The Department received with the application a Notice of Chapter 7 Bankruptcy Case & Meeting of Creditors and Deadlines. Exhibit 4.
7. The November 9, 2011 application also contained a statement on the Asset Declaration Patient and Spouse, DHS 4674 an asterisks' note at the bottom indicating "Filed Bankruptcy w/attorney [REDACTED] see attached" Exhibit 5.
8. The value of the rental home exceeded the \$2,000 (\$3,000 for a couple) asset limit for eligibility for Medical Assistance.
9. The Claimant, through his Authorized Representatives, requested a hearing on January 29, 2012 protesting the denial of the application.

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 AACRS, 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.

Additionally, the question presented by this hearing request is whether the Department should have questioned whether the rental property real estate asset was an available asset at the time of the application. The applicable policy is found in BEM 400 and provides:

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.

Assume an asset is available unless evidence shows it is not available. BEM 400 p.6 and 7.

The Evidence produced at the hearing established that at the time of the Claimant's application, the Claimant disclosed, and the Department was advised that a bankruptcy was pending. The Asset Declaration Patient and Spouse form noted in bold at the bottom with an asterisk the following statement: "Filed Bankruptcy w/attorney [REDACTED]. [REDACTED] See attached". The attachment contained the contact information for the Claimant's attorney and a Notice of Chapter 7 Bankruptcy Case Meeting of Creditors and Deadlines, Exhibits 4 and 5. This information was sufficient to at least raise the question of whether certain assets, including the rental property disclosed on the Asset Declaration were subject to the Chapter 7 Bankruptcy, and if so, whether the particular asset was available within the meaning of BEM 400. The Department should have sought further verification from both the Claimant and the Claimant's attorney to determine if the asset was available, particularly in light of the disclosure by the Claimant that the assets were subject to a bankruptcy. The Department is required, when advised of a situation which might affect eligibility, to make further inquiry so the necessary facts are available to the Department to make its determination of eligibility. BAM130.

Based upon the foregoing the Department's action denying the Claimant's application is deemed incorrect and not in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department

did act properly when

did not act properly when it denied the Claimant's November 9, 2011 application for Medical Assistance. (Medicaid patient of nursing facility).

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. The Department is ordered to reinstate and process the November 9, 2011 application and determine the Claimant's eligibility in accordance with Department policy.
2. the Department shall issue a supplement for benefits the Claimant was otherwise entitled to receive, if any, in accordance with Department Policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 25, 2012

Date Mailed: June 25, 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 to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/hw

cc:

