

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201256789
Issue No: 2021
Case No: [REDACTED]
Hearing Date: July 18, 2012
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on May 30, 2012. After due notice, a telephone hearing was held on Wednesday, July 18, 2012. Participants on behalf of Claimant include [REDACTED]. Participants on behalf of the Department of Human Services (Department) include [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not eligible for Medical Assistance (MA) due to 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. The Claimant was an ongoing recipient of Medical Assistance (MA) as a group of one.
2. On May 17, 2012, the Department sent the Claimant a Verification Checklist with a due date of May 29, 2012. The Department requested that the Claimant provide a current statement from his bank.
3. On May 18, 2012, the Department received a copy of a bank statement showing the Claimant held a bank account with a balance of [REDACTED] as of April 30, 2012.
4. On May 29, 2012, the Department received a copy of a bank statement showing the Claimant held a bank account with a balance of [REDACTED] as of March 31, 2012.

5. The Claimant provided verification of other bank accounts with balances of [REDACTED] and [REDACTED].
6. On May 21, 2012, the Department notified the Claimant that it would close his Medical Assistance (MA) due to excess assets.
7. The Department received the Claimant's request for a hearing on May 30, 2012, protesting the closure of his Medical Assistance (MA) benefits.

CONCLUSIONS OF LAW

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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Assets must be considered in determining eligibility for Medical Assistance (MA). Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles). 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. Some programs do not count assets. An asset is countable if it meets the availability tests and is not excluded. 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. For all other SSI-related MA categories, the asset limit is \$2,000 for an asset group of one. BEM 400.

In this case, the Claimant was an ongoing recipient of Medical Assistance (MA) as a group of one. On May 17, 2012, the Department sent the Claimant a Verification Checklist with a due date of May 29, 2012. The Department requested that the Claimant provide a current statement from his bank. On May 18, 2012, the Department received a copy of a bank statement showing the Claimant held a bank account with a balance of [REDACTED] as of April 30, 2012. On May 29, 2012, the Department received a copy of a bank statement showing the Claimant held a bank account with a balance of [REDACTED] as of March 31, 2012.

The Claimant provided verification of other bank accounts with balances of [REDACTED] and [REDACTED].

The Claimant notified the Department and provided verification of three bank accounts that he possesses an ownership interest in. The Claimant does not dispute the value of these accounts, that they are not jointly held, and he does not claim that they are

non-salable assets. The Claimant failed to establish that the bank accounts that the accounts are held in trust.

Based on the evidence and testimony available during the hearing, the Department has established that the three bank accounts contain cash that is available to the Claimant, and are not excluded from countable assets as directed by BEM 400.

The total countable value of the Claimant's three bank accounts is [REDACTED] and the asset limit to receive Medical Assistance (MA) as a group of one under the SSI related Group 2 category is [REDACTED]0.

On May 21, 2012, the Department notified the Claimant that it would close his Medical Assistance (MA) due to excess assets.

The Claimant argues that the bank account containing [REDACTED] as of March 31, 2012, should be excluded from countable assets. The Claimant argued that the funds were being held in a self-managed escrow account, were being held for the purposes of rehabilitating a delinquent mortgage, and were not comingled with his other funds.

Department policy allows available funds to be excluded from countable assets under certain circumstances. These exclusions, listed in BEM 400, consist of the Homestead-Loss Funds Exclusion, the Homestead Sale Exclusion, the Medicare Set-Aside Account exclusion, the non-Homestead Loss Exclusion, a Loan Exclusion, the Reverse Mortgage Exclusion, the Tax Refund and Tax Credit Exclusion, income excluded under the BEM 500 series, the Current Income Exclusion, the Business Account Exclusion, an SSI dedicated account, the retroactive RSDI and SSI exclusion, the Burial Arrangement exclusion, Retroactive Tax and Utility Cost Subsidy Payments, and the Student Savings Exclusion.

This Administrative Law Judge finds that the Claimant's cash accounts are available funds that do not meet any of the exclusions defined in BEM 400.

The Claimant argues that if the bank account containing [REDACTED] as of March 31, 2012, is found to be a non-excluded available asset, the fund should not be considered countable assets in the interests of public policy to encourage homeowners to save their homes from the foreclosure process.

The Claimant also argues that categorizing the Claimant's funds as countable assets under his unique circumstances would be an undue hardship and the Department is permitted to grant an exception as directed by BEM 100.

The granting of exceptions to Department policy on the basis of undue hardship or furthering public policy is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. Michigan Mutual Liability Co. v Baker, 295 Mich 237; 294 NW 168 (1940).

Therefore, the Department properly determined that he is not eligible to receive Medical Assistance (MA) due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's Medical Assistance (MA) eligibility and closed benefits due to excess assets.

The Department's Medical Assistance (MA) eligibility determination is **AFFIRMED**. It is SO ORDERED.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 15, 2012

Date Mailed: August 16, 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 60 days of the filing of the original request.

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.

KS/tb

cc:

