

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-39505
Issue No.: 2018
Case No.: [REDACTED]
Hearing Date: January 30, 2013
County: Livingston

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 January 30, 2013, at the Livingston County DHS office. Participants on behalf of Claimant included Attorney [REDACTED] [REDACTED]. Participants on behalf of Department of Human Services (Department) included Assistant Attorney General [REDACTED] [REDACTED], General Service Program Manager [REDACTED] [REDACTED], Eligibility Specialist [REDACTED] [REDACTED], Adult Services Worker [REDACTED] [REDACTED], and Eligibility Specialist [REDACTED] [REDACTED].

ISSUE

Did the Department properly close Claimant's Medicaid Assistance (MA) benefits subsequent to an audit that determined Claimant had 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. Claimant was admitted to a Nursing Facility on May 19, 2009.
2. Claimant applied for Medicaid on April 29, 2011.
3. On June 3, 2011, Claimant was approved for Medicaid.
4. On February 16, 2012, an audit found Claimant's case was ineligible for Medicaid based on excess assets.
5. On February 16, 2012, the department mailed Claimant a Notice of Case Action informing her that her Medicaid was closing due to excess assets.

6. On February 24, 2012, Claimant through her attorney, timely filed a hearing request protesting the closure of Medicaid.
7. On February 24, 2012, the department reinstated Medicaid coverage pending this hearing.

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 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. Medical Assistance is also known as Medicaid.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. The local office is responsible for determining a Client's eligibility, calculating their level of benefits and protecting their rights. BAM 105.

As an initial matter, both parties were asked to submit case law supporting their positions and neither party did. Furthermore, it should be noted that Claimant's initial application for Medicaid was approved by the department and the application listed the jewelry now at issue in this case.

According to the hearing summary, seven months after Medicaid had been approved by the department, Claimant's case was "reviewed/audited," and at that time determined to be excess assets and closed. Claimant's case was closed due to a monthly Quality Control review. BAM 320, p 1. For Quality Control reviews, a statewide random sample of households is selected from two different categories: active cases and negative cases (households which were denied or terminated). The purpose of the sample selection is to determine if the eligibility decision and/or benefit amount for the sample month was correct. Quality Control findings determine the incidence and dollar amounts of errors. The objectives of Quality Control reviews are to provide:

- A systematic method of measuring the validity of the program determinations made by the FIS/ES.
- A basis for determining error and misissuance rates.
- A process in which to develop a corrective action plan at all levels of administration. BAM 320, p 1.

Based on the Quality Control audit, the auditors determined that the granting of Medicaid in this case was in error and closed the case based on excess assets.

Therefore, the department had a right, and a duty, to conduct the case review leading to the closure.

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories . BEM 400, p 4 (1/1/2013). Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. Medicaid will not be authorized for future months if the person has excess assets on the processing date. BEM 400, p 4 (1/1/2013). If an ongoing Medicaid recipient or active deductible client has excess assets, closure will be initiated. BEM 400, p 5 (1/1/2013).

For all other SSI-related MA categories, the asset limit is \$2,000 for an asset group of one and \$3,000 for an asset group of two. BEM 400, p 5 (1/1/2013). 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, p 7 (1/1/2013). Assume an asset is available unless evidence shows it is not available.

At issue in this case is the “personal good” exception regarding countable assets for the Medicaid program. At the time of application, April 29, 2011, the “personal goods” exception excluded: “those items of personal property that are worn or carried by a person or items that have an intimate relation to him. Examples are personal clothing and jewelry, personal care items, and educational or recreational items such as books, musical instruments or hobby material.” BEM 400, p 22 (1/1/2009).

In this case, Claimant’s representative admits in her brief that Claimant’s CD’s were cashed in prior to her 2009 Medicaid application and the \$ [REDACTED] in jewelry was purchased with the funds from the CDs. (Claimant’s Amended Supplemental Brief, p 3, #12). Claimant admits the CD was a countable asset, and that the use of a countable asset to purchase an exempt asset pursuant to BEM 405 is not a divestment. However, the issue in this case is excess assets, not divestment.

Claimant’s authorized hearing representative contends the jewelry is exempt under the “personal goods” exception. BEM 400, p 22 (1/1/09). Claimant argues “The BEM 400 is clear. It doesn’t require that the good be present on the person – intimate relationship. The use of the word ‘or’ in the policy preceding the term ‘intimate relationship’ is used merely to state one of the conditions with which a personal good that is not one of the listed examples can still be considered a personal good. Jewelry is given as a specific example of a personal good. Therefore the jewelry purchased by [Claimant] is exempt. At no point within the BEM does it state that jewelry to be exempt [must] have as a prerequisite an ‘intimate relationship’.” (Claimant’s Brief, p 4, #16).

The department argues that because Claimant “never wore the jewelry, did not own it before she went into the nursing home and because it was of no intimate relationship to her, it is not excludable for purposes of qualifying for Medicaid assistance. BEM 405, SI 01130.43.” Respondent’s Hearing Summary, p 2.

As an initial matter, the department relies on the Social Security Administration Program Policy Information that is found in the Program Operations Manual System (POMS), which is cited by the department at SI 01130.43. However, the department provides no precedent for this Administrative Law Judge that federal Social Security Administration policy information in a Program Operations Manual has precedential authority over a state policy, and therefore the information is not relied on in reaching this decision.

Looking next to BEM 405, BEM 405 concerns Medicaid Divestment. According to the Notice of Case Action, Claimant's Medicaid case was not closed due to divestment, but due to excess assets, which falls under BEM 400. Therefore, BEM 405 was not relied on in making this decision.

While there is no case law in Michigan directly on point, this Administrative Law Judge finds persuasive the holding in *HK v State Dept of Human Services, Div of Medical Assistance and Health Services*, 184 NJ 367, 877 A2d 1218 (2005), that "[p]roperty transfer should not be viewed with skepticism and disapproval merely because it may precede Medicaid eligibility." In this case, it appears to be the timing of the jewelry purchase, just prior to the Medicaid application that raised the issue at hand.

Also, "[t]imely transfer of property, even if done to achieve Medicaid eligibility status, is permissible." *Id.* Similarly, countable assets can be used to purchase excluded assets, pay bills, or pay down debts on excluded assets. PLANNING FOR MEDICAID QUALIFICATION (State Bar of Mich, Probate and Estate Planning Section, 2002). Moreover, purchasing needed excluded assets such as home improvements, a car, personal items, household goods, a prepaid irrevocable funeral contract or funeral insurance can be considered. *Id.*

Looking only at personal property, other states have found "jewelry and other personal effects used by an applicant," as non-countable, while some states have limited jewelry to "wedding and/or engagement rings (but not other jewelry)."

Referring back to BEM 400, exempt assets are "those items of personal property that are worn or carried by a person or items that have an intimate relation to him. Examples are personal clothing and jewelry, personal care items, and educational or recreational items such as books, musical instruments or hobby material." BEM 400, p 22 (1/1/2009).

"Jewelry" is specifically named as an example of personal property which is an exempt asset. Claimant's daughter testified that the jewelry has been stored in a safety deposit box, and at one time or another, Claimant had touched and/or worn the jewelry and submitted photographs showing Claimant wearing jewelry. (Claimant's Exhibit E).

Based on the facts and evidence presented, including the briefs from both parties, this Administrative Law Judge finds the jewelry is an exempt asset.

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 closed Claimant's Medicaid benefits for excess assets. Accordingly, the Department's MA decision is **REVERSED**.

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

Date Signed: February 21, 2013

Date Mailed: February 22, 2013

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

VLA/las

cc:

