

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

IN THE MATTER OF:

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Reg. No.: 2013-29756
Issue No.: 2014
Case No.: ██████████
Hearing Date: August 7, 2013
County: Muskegon-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 August 7, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's Power of Attorney, ██████████, and Claimant's Attorney, ██████████. Participants on behalf of the Department of Human Services (Department) included Kellen Facchini, and, Rachel Lajuardo. Assistant Attorney General, Geraldine Brown, also appeared for the Department.

ISSUE

Did the Department properly deny Claimant's application 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. Claimant applied for Medicaid-LTC on October 30, 2012.
2. On January 17, 2013, the Department denied Claimant's MA application due to excess assets.
3. Claimant requested hearing on February 5, 2013, contesting the denial of MA due to excess assets.
4. Claimant owns a stock portfolio, referred to as the Schweitzer-Mauduit stock holdings, jointly with her three children.
5. Claimant's share of the stock portfolio is unavailable to her because she needs the other joint owner's consent to sell her share and the other joint owners refuse to give their consent.

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.

JOINTLY OWNED ASSETS FIP, SDA, LIF, G2U, G2C, SSI-Related MA AMP and FAP

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

Note: For FTW determinations, jointly owned assets are considered to belong to the initial person.

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

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.

Exception: This does **not** apply to trusts. There are special rules about trusts. See **Trusts** in this item for FIP, SDA, AMP and FAP. See **BEM 401** for MA trust policy. BEM 400

Assume an asset is available unless evidence shows it is **not** available. BEM 400

Additionally, the stock portfolio in question is held jointly by the Claimant with her children. The Claimant's children have refused to liquidate the portfolio. The stock portfolio is unavailable to the Claimant. BEM 400

The Department argued that the rules related to joint tenancy with rights of survivorship should apply in these circumstances, and that Claimant could petition a Michigan court to order the stock sold, but those rules only apply to real estate. BEM 400 page 9. The Department failed to cite any authority that the rules regarding joint tenancy with rights of survivorship apply to financial assets. There is also a question as to whether a Michigan court would have jurisdiction to order the disposition of these accounts since they are held in another state.

Claimant's attorney requested sanctions alleging that the Department's position was frivolous and unfounded, in fact, and law. This Administrative Law Judge does not find that the Department's argument was frivolous and denies the request for sanctions.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly when they denied Claimant's application for Medicaid due to excess income.

did not act properly when denied Claimant's MA-LTC application due to excess assets.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED **REVERSED** for the reasons set forth in this decision.

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

1. Reinstate and reprocess Claimant's MA-LTC application back to the date of application, excluding the Schweitzer- Mauduit stock holdings as assets, because they are unavailable.
2. Activate MA-LTC going back to the date of application if Claimant is otherwise eligible.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 08/30/2013

Date Mailed: 08/30/2013

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 affect the substantial rights of the Claimant;
 - 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

AM/pw

cc: [REDACTED]
[REDACTED]
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