

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201338653
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: August 1, 2013
County: Jackson

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 1, 2013. Claimant and his authorized hearing representative, [REDACTED], appeared and testified. The Department was represented by [REDACTED] and [REDACTED].

ISSUE

Did the Department of Human Services properly deny Claimant's January 14, 2013, application for Medical Assistance (MA) with retroactive coverage back to October 2012, 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) Claimant submitted an application for Food Assistance Program (FAP) benefits some time in December 2012.
- (2) On January 2, 2013, the Department received verification of Claimant's checking and savings accounts for the month of December.
- (3) On January 3, 2013, the Department received verification of the two motor vehicles Claimant owned.
- (4) On January 10, 2013, the Department received a valuation letter from [REDACTED] Chevrolet and Honda for Claimant's 2003 Jeep Grand Cherokee.

- (5) On January 10, 2013, Claimant signed an authorization for [REDACTED] to represent him.
- (6) On January 14, 2013, [REDACTED] submitted a Medical Assistance (MA) application on behalf of Claimant. Because the Department already had verifications of Claimant's assets, no Verification Checklist (DHS Form 3503) was necessary, or issued.
- (7) On January 22, 2013, Claimant and [REDACTED] were sent a Notice of Case Action (DHS-1605) which stated Claimant's Medical Assistance (MA) application was denied due to excess assets.
- (8) On April 3, 2013, [REDACTED] submitted a request for hearing disputing the value of Claimant's assets.

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) and the Program Reference Manual (PRM).

The Department assigned a value of [REDACTED], to Claimant's Jeep. The Medical Assistance (MA) asset limit for Claimant is [REDACTED]. During this hearing the January 10, 2013, valuation was reviewed (Department exhibit 1 page 7). The valuation assigns a [REDACTED] value to Claimant's Jeep. FIM Baibak testified that the [REDACTED] value used should be corrected to [REDACTED]. There was also a [REDACTED] discrepancy in the valuation of Claimant's checking account for December 2012, which the Department concedes. The Department asserts that even with the value of Claimant's Jeep reduced to [REDACTED], Claimant is still over the [REDACTED] asset limit and would have been over for all three requested retro months.

Claimant asserts that the Jeep is only worth [REDACTED]. At this hearing Claimant presented a valuation letter from Monroe Street Auto Sales which assigns a [REDACTED] value to the Jeep and was signed on January 17, 2013. Claimant testified that his sister was getting all the verifications for him and taking them to the Department. Claimant asserts that his sister went out and obtained the January 17, 2013, valuation letter and took it to the Department prior to denial of his Medical Assistance (MA) application. FIM Baibak testified that only the January 10, 2013, valuation letter is in the record for this application. FIM Baibak stated that Claimant had submitted another Medical Assistance (MA) application on April 23, 2013, which was pending and that he believes a copy of the January 17, 2013, valuation letter is in that file. In order to ensure all relevant evidence for Claimant is included in this decision, the record is held open to obtain the

copy of the January 17, 2013, valuation letter in the Department's possession in order to see what date it was submitted to the Department.

Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.
During this hearing the

Claimant testified that his sister went out and obtained the January 17, 2013 valuation letter and took it to the Department prior to January 22, 2013, the date this application was denied. Claimant does not have personal knowledge of his sister's activity outside his direct observation. This assertion is not competent and cannot be the basis of a decision in this case.

A copy of the January 17, 2013, valuation letter in the possession of the Department was submitted. The received date stamp on the letter is April 23, 2013. The competent material and substantial evidence in this record shows that on January 22, 2013, the only valuation of Claimant's Jeep in the Department's possession was the January 10, 2013, letter from Moehn Chevrolet and Honda. Therefore, the January 22, 2013, denial was in accordance with Department policy.

During this hearing Claimant also testified that in February he entered an agreement to sell the Jeep for [REDACTED]. The initial terms of the agreement were that the buyer would pay him [REDACTED] per month. Claimant testified that the buyer: was driving him around in the Jeep prior to the sales agreement; began using the Jeep in February and returned it to him in May after making no payments. Claimant testified that the buyer told him there were problems with the transmission, that the vehicle smelled like it was overheating even though the warning light did not come on, and the power window did not work correctly. Based on those complaints the buyer wanted Claimant to repair the vehicle or she would not buy it.

This testimony shows that in February, after denial of this application, both Claimant and the unidentified buyer felt the Jeep was worth [REDACTED]. This fact refutes the January 17, 2013, valuation letter for [REDACTED]. Any subsequent problems which may have occurred with the Jeep AFTER the denial are not relevant to its value at the time of the denial.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly denied Claimant's January 14, 2013, application for Medical Assistance (MA) with retroactive coverage back to October 2012, due to excess assets.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 08/12/2013

Date Mailed: 08/12/2013

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 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.

GFH/sw

cc:

