

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201351226
Issue No.: 2010
Case No.: [REDACTED]
Hearing Date: August 8, 2013
County: Wayne County DHS #82

ADMINISTRATIVE LAW JUDGE: Jan Leventer

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 August 8, 2013, from Detroit, Michigan. The Claimant did not appear. Participants on behalf of Claimant included the Claimant's brother and Authorized Representative, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Business Office Manager, [REDACTED] Health Care Center, and [REDACTED] Asst. Business Office Manager, [REDACTED] in [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Child Development and Care (CDC)? |

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 benefits received benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input checked="" type="checkbox"/> Medical Assistance (MA). | <input type="checkbox"/> Child Development and Care (CDC). |

2. On May 2, 2013, the Department
 denied Claimant's application closed Claimant's case
due to a determination that Claimant possessed assets above the \$2,000 limit.
3. On May 2, 2013, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure.
4. On May 31, 2013, Claimant filed a hearing request, protesting the
 denial of the application. closure of the case.

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 1999 AC, Rule 400.3101 through Rule 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 1999 AC, Rule 400.3001 through Rule 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 AACS, Rule 400.3151 through Rule 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 1999 AC, Rule 400.5001 through Rule 400.5015.

Additionally, \$ [REDACTED] is the maximum assets a customer can possess in order to be eligible for Medicaid benefits. Department of Human Services Bridges Eligibility Manual (BEM) 400 (2013), p. 6. The assets at issue in this case are two prepaid funeral contracts, one for \$ [REDACTED] and one for \$ [REDACTED] totaling \$ [REDACTED] 30. Dept. Exh. 1, pp. 3-11.

If the Department decides that these assets are countable assets owned by the Claimant, then clearly the Claimant has assets over \$ [REDACTED] and he is not eligible for Medicaid benefits. On the other hand, if the Department decides that the assets are not countable assets, then the assets may be excluded from Claimant's countable assets and Claimant may or may not then be eligible for Medicaid. BEM 400, p. 6.

The first consideration in this case shall be to determine the applicable law, i.e., the Department policy and procedure, in this case. The Department's Bridges Administrative Manual (BAM) 805, "Prepaid Funeral Contracts," is the applicable policy, and it shall be applied in this case. Department of Human Services Bridges Administrative Manual (BAM) 805 (2013).

BAM 805 states that there are four types of funeral contracts in Michigan: guaranteed price contract, non-guaranteed price contract, revocable contract and irrevocable contract. A decision that the contract is revocable means that the Claimant in effect has kept ownership of the asset. A Department decision that the contract is irrevocable means that the Department may exclude it from the Claimant's countable assets. An irrevocable contract means that the asset is permanently unavailable to the purchaser and/or beneficiary. *Id.*, pp. 1-2.

Next, the history of this case will be reviewed and set forth. The following additional findings of fact and conclusions of law are entered in this case.

On October 18, 2012, Claimant executed an Enrollment Form and purchased additional insurance from Homesteaders Life Company, for \$ [REDACTED] Dept. Exh. 1, pp. 3-4.

Also on October 18, 2012, Claimant executed an Assignment of Life Insurance Proceeds. It is initialed by a person claiming to be the Representative of a Funeral Home; however, the funeral home is not named in the Assignment and the Representative also is not identified by name. *Id.*, p. 5.

Also on October 18, 2012, a third document was executed, titled "Guaranteed Revocable Preneed Funeral Agreement." The parties to this document are the Claimant and the Martenson F.H. Ridge Chapel. *Id.*, p. 6.

On October 23, 2012, Claimant executed a second Enrollment form and made a second purchase of additional insurance of \$7,844.40. On the same day he executed another Assignment of Life Insurance Proceeds, identical with the October 18 Assignment in that no funeral home or the name of the representative, is stated. Also on this day Claimant executed a second Guaranteed Revocable Preneed Funeral Agreement, and the second party is named as Martenson F.H. *Id.*, pp. 8-10.

The Homesteaders Enrollment Form is silent as to whether the contract being created is revocable or irrevocable. *Id.*, pp. 3, 7. However, the Homesteaders Assignment of Life Insurance Proceeds states in Paragraph 1 that

[t]his assignment may be revoked...If the assignment is revoked, the death benefit under the life insurance policy or annuity shall be paid in accordance with the beneficiary designation under the insurance policy or annuity contract. Notwithstanding anything in the preneed funeral agreement to the contrary, upon revocation of this assignment, the preneed funeral agreement is revoked and cemetery goods or services or funeral services or goods may be obtained from any cemetery, funeral establishment or seller. *Id.*, pp. 5, 9.

Having reviewed this language in the contract, and all of the evidence in this case in its entirety, it is found and determined that this language clearly states that the contract between Claimant and Homesteaders is revocable. It further details the parties' agreement as to what shall be done if it is revoked; that is, that the money shall be paid to the beneficiary. And, it further states that when it is revoked the parties may make a new contract with a seller of their choice. *Id.*

In addition to the language of paragraph 1 in the Assignment form, paragraph 2 states that if Claimant is deceased and an estate is opened, the representative of the estate may refuse to authorize Homesteaders to release the proceeds to the funeral home. Also, paragraph 5 states that the Preneed Funeral Agreement cannot automatically revoke Claimant's Assignments unless the Assignments are specifically revoked. *Id.*

Having carefully reviewed the Assignment forms in this case, and, having reviewed all of the evidence in this case in its entirety, it is found and determined that there is no evidence to support the Claimant's assertion that the Assignments are irrevocable. Indeed, the Assignment forms make it abundantly clear that the parties intend the assignments to be revocable at the discretion of the Claimant or his representative, the forms state what will happen when revocation occurs, and, the Assignments specifically

state that unless the Assignments are specifically revoked they cannot be revoked by changes to the Preneed Funeral Agreements. *Id.*

In conclusion, having carefully considered all of the evidence in this case in its entirety, it is found and determined that the Department acted correctly in denying MA benefits to Claimant based on his countable assets, which are more than \$2,000. BEM 400. The Department is affirmed.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly denied Claimant's application improperly denied Claimant's application
 properly closed Claimant's case improperly closed Claimant's case

for: AMP FIP FAP MA SDA CDC.

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. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 23, 2013

Date Mailed: August 23, 2013

NOTICE OF APPEAL : 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

JL/hj

cc:

