

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

IN THE MATTER OF:

██████████
██████████
████████████████████

Reg. No.: 2013-60780
Issue No.: 2021
Case No.: ██████████
Hearing Date: October 16, 2013
County: Chippewa-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in person hearing was held on October 16, 2013, from Sault Ste. Marie, Michigan. Participants on behalf of Claimant included the Claimant's ██████████. Claimant's Attorney, ██████████, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included Leann Thompson, and Andrea Warner.

ISSUE

Did the Department properly deny Claimant's MA 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 MA-LTC on January 31, 2013.
2. On May 1, 2013 Claimant's application for MA-LTC was denied due to excess assets.
3. On July 1, 2013 Claimant requested hearing contesting the denial of MA-LTC due to excess assets.
4. On April 4, 2012 an initial application and assets declaration was received by the Department. The Initial Asset Assessment date used was March 20, 2012. The contents of the ██████████ Revocable Living trust were not stated in this document.
5. On March 19, 2002 real estate owned by Claimant, and ██████████, with an ██████████ was deeded to ██████████ Revocable Living Trust.

6. On May 1, 2013 Claimant's attorney sent an email listing property held in trust, including the homestead.
7. On December 14, 2012, an email from [REDACTED], to [REDACTED], shows details concerning the contents of Claimant's trust were again requested.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly

known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

INITIAL ASSET ASSESSMENT

MA Only

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse.

An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989.

MA Only

The DHS-4574-B, Assets Declaration, is used to request an initial asset assessment.

Notification - MA Only

Notify both spouses in writing of the results of the initial asset assessment whether it is done prior to, or at the time of, an MA application. Use the following:

- DHS-4588, Initial Asset Assessment Notice, and;
- DHS-4585, Initial Asset Assessment and Asset Record.

The above notices inform the couple of the:

- Total amount of their countable assets, and;
- The protected spousal amount, and;
- Their hearing rights.

Send copies of all verifications or other documents used in making the initial asset assessment along with each copy of the notices.

Standard of Promptness - MA Only

Complete an initial asset assessment and mail notices within 45 days. The period begins on the date the local office receives the signed DHS-4574-B.

A person who requests an initial asset assessment, without applying for MA, must be given the same assistance in completing the assessment and obtaining verification that would be provided to any client. See BAM 130 for types of verification, sources and timeliness standards. An initial asset assessment **cannot** be completed if a client, or his spouse, refuses to provide verification or has **not** made a reasonable effort to obtain it within the time standards in BAM 130.

Do **not** deny/terminate a Group 2 Pregnant Woman or Healthy Kids category if the client chooses **not** to cooperate with the initial asset assessment.

PROTECTED SPOUSAL AMOUNT

MA Only

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the **greatest** of the amounts in 1-4 below.

\$23,184 effective January 1, 2013
\$22,728 effective January 1, 2012
\$21,912 effective January 1, 2010
\$21,912 effective January 1, 2009.
\$20,880 effective January 1, 2008.
\$20,376 effective April 1, 2007.

1. One-half the initial asset assessment amount (see INITIAL ASSET ASSESSMENT), but **not** more than:

\$115,920 effective January 1, 2013.
\$113,640 effective January 1, 2012.
\$109,560 effective January 1, 2010.
\$109,560 effective January 1, 2009.
\$104,400 effective January 1, 2008.
\$101,880 effective April 1, 2007.

2. The amount determined in a hearing per BAM 600.

3. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:

- Pay support to the community spouse, and;
- Transfer assets to the community spouse for the support of the community spouse or a family member. BEM 402

Additionally, the issue in dispute is whether the Claimant's homestead should have been included when the initial asset determination was made. Claimant argues that as a matter of fact, the homestead was held in trust in March 2012, and thus should have been counted when the initial asset assessment was made. The Department's position is that Claimant failed to list the homestead in the list of assets for the initial asset assessment, and they had reason to rely on that assertion when they made the initial asset assessment, especially since several inquiries were made about the contents of Claimant's trust. [REDACTED] testified that she told the Department worker that the real estate was held in trust during a conversation in December 2012. A December 14, 2012, email from [REDACTED], to [REDACTED], shows that details concerning the contents of the trust were specifically requested. (Exhibit 26). If the Department was already aware of the real estate being held in trust then why would this inquiry have been made? No credible evidence was presented that Claimant, or her agents, informed the Department that the real property was held in the trust prior to May 1, 2013. Since the homestead was not listed as being held in trust, despite the Claimant being given an opportunity to list it, the Department's actions in including the real property in the IAA were proper and correct according to Department policy. BEM 402. The Department's determination of countable assets of [REDACTED] Protected Spousal Amount of [REDACTED]. Claimant's assets exceeded this amount and therefore denial of the application due to excess assets was proper and correct.

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

- acted in accordance with Department policy when it denied Claimant's MA application due to excess assets.

DECISION AND ORDER

Accordingly, the Department's decision is

- AFFIRMED.**



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

Date Signed: 11/08/2013

Date Mailed: 11/08/2013

NOTICE OF APPEAL: 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.

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).

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

ATM/pw

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]