

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201319171
Issue No.: 2021
Case No.: [REDACTED]
Hearing Date: May 23, 2013
County: Saginaw

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 May 23, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] (Claimant's Authorized Hearing Representative) and [REDACTED] (Claimant's son-in-law). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) for Long-Term Care (LTC) benefits 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 September 28, 2012.
2. At the time of application, Claimant had a checking and/or savings account in his name with a balance of \$3,344.80.
3. On October 24, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which found Claimant eligible for MA-LTC effective October 1, 2012.

4. On November 5, 2012, Claimant's AHR requested a hearing to dispute the Department's decision to find eligibility for MA-LTC on October 1, 2012 rather than September 1, 2012.

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 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 MA program is also referred to as "Medicaid." BEM 105. 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. BEM 105. The Medicaid program is comprised of several sub-programs or categories. One category is FIP recipients. BEM 105. Another category is SSI recipients. BEM 105. There are several other categories for persons not receiving FIP or SSI. BEM 105. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. BEM 105. Therefore, these categories are referred to as either FIP-related or SSI-related. BEM 105.

To receive Medicaid under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive Medicaid under FIP-related categories. For MA only, a client and the client's community spouse have the right to request a hearing on an initial asset assessment only if an application has actually been filed for the client. BAM 105. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. BEM 105.

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. The income limit, which varies by category, is for nonmedical needs such as food and shelter. Medical expenses are not used when determining eligibility for FIP-related and SSI-related Group 1 categories. For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for FIP-related and SSI-related Group 2 categories. BEM 105.

MA Ad-Care is an SSI-related Group 1 MA category available to persons who are aged or disabled (AD). BEM 163. MA Ad-Care is used before using Extended Care (BEM

164) or any Group 2 MA category. BEM 163. The department will consider eligibility under this category only if eligibility does not exist under BEM 154 through 158. BEM 163.

Assets must be considered in determining eligibility for SSI-related MA categories. BEM 400. Assets are defined as cash, any other personal property and real property. BEM 400.

“Cash” includes the following types of assets: (1) money/currency; (2) uncashed checks, drafts and warrants; (3) checking and draft accounts; (4) savings and share accounts; (5) money market accounts; (6) LTC patient trust fund and all other money held by the facility for the patient (i.e., patient has prepaid in advance for the nursing home stay); (7) money held by others (i.e., Sally does not have a bank account. She puts money in her mother's checking account, but it is not a joint account); (8) time deposits (a time deposit is a contract between a person and a financial institution whereby the person agrees to leave funds on deposit for a specified period in return for a specified interest rate. Common time deposits are certificates of deposit (CDs) and savings certificates. BEM 400.

Countable assets cannot exceed the applicable asset limit. BEM 400. An asset is countable if it meets the availability tests and is **not** excluded. BEM 400. An asset must be available to be countable. BEM 400. “Available” means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400. Exception: This does not apply to trusts because there are special rules about trusts. See BEM 400 & BEM 401.

All types of assets are considered for SSI-related MA categories. BEM 400. For SSI-Related MA and AMP only, a person's death and probating his estate does not make his assets unavailable for purposes of determining his or her eligibility. BEM 400. The Department must determine asset eligibility for the days of the month the person was alive. BEM 400.

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories. BEM 400. 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. BEM 400.

If an ongoing MA recipient or active deductible client has excess assets, the Department may initiate closure. BEM 400. However, the Department must delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients will be penalized for divestment; see BEM 405. BEM 400.

For SSI-Related MA, the asset limit is \$2,000 for an asset group of 1 (one) and \$3,000 for an asset group of 2 (two).

Here, the Department maintains that Claimant, at the time of application, had excess assets for MA Group 1 which is \$3,000.00. Claimant's AHR does not dispute that Claimant had excess assets at the time, but contends that a Department worker advised her that she could maintain the \$3,344.80 for burial expenses and that it would not be counted as an asset. The Department counters that Claimant's \$3,344.80 account did not meet the requirements for an excluded burial fund and that only BEM 400 was explained.

BEM 400 provides that a funeral plan, which refers to the prearrangement for cemetery and/or funeral goods and services, can be established using one or more of the following: (1) burial fund; (2) purchase of burial space; (3) prepaid funeral contract; and (4) life insurance funding. BEM 400.

The following assets can be a "burial fund": (1) cash; (2) investments; (3) life insurance; and (4) a prepaid funeral contract.¹ BEM 400. A limited amount of certain types of assets a person has **clearly designated** to pay for burial expenses is excluded as a burial fund. BEM 400.

"Clearly designated" means that the designation can be on the asset (example: title on a bank account, prepaid funeral contract) or on a signed statement from the client. BEM 400. The designation **must** include the following information: (1) value and owner of the asset; (2) whose burial the fund is for; (3) date the funds were set aside for the person's burial; (4) form in which the asset is held (example: bank account, life insurance). BEM 400. The funds may **not** be commingled with any assets except excluded burial space assets. BEM 400.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record, including the account statement referencing Claimant's \$3,344.80 at the time of application. There is no dispute that Claimant had excess assets. This Administrative Law Judge finds the Department's version of events to be more credible. Claimant's account does not meet the requirements for a burial fund as defined by BEM 400. The account document is not clearly designated on the asset as a burial fund. Although Claimant's AHR later attempted to write on a bank statement that the amount was intended to be used as a burial plot, there is no evidence that this was

¹ A prepaid funeral contract means a contract requiring payment in advance for funeral goods or services. Contracts may be revocable or irrevocable. BEM 400.

indicated prior to the Department's determination of excess assets. Nor does this document meet the listed requirements under BEM 400. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department acted properly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly when it denied Claimant's application for MA-LTC due to excess assets.

Accordingly, the Department's MA-LTC decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 24, 2013

Date Mailed: May 28, 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.

201319171/CAP

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

CAP/aca

cc:

