

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

IN THE MATTER OF:

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

Reg. No.: 2013-33136
Issue No.: 2021
Case No.: ██████████
Hearing Date: June 18, 2013
County: Marquette

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 hearing was held on June 18, 2013, in Marquette, Michigan. Participants on behalf of Claimant included Claimant, Claimant's sister and Authorized Hearing Representative, ██████████, ██████████, and Claimant's daughter, ██████ ██████. Participants on behalf of the Department of Human Services (Department) included ██████████, ES.

ISSUE

Did the Department properly close Claimant's case for MA?

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 received benefits for MA.
2. On January 14, 2013, the Department sent Claimant notice of Claimant's MA case closing, effective February 1, 2013. (Exhibit 2, p.10)
3. At the time of the closure of Claimant's case, Claimant's residence was trust property of the Kathryn S. Aalto Trust, dated December 14, 1992, and amended March 13, 1998, August 31, 1998 and February 17, 1999 ("trust"). (Exhibit 1)
4. Claimant was grantor of trust, and the trust was revocable by Claimant.

5. On March 1, 2013, Claimant filed a hearing request, protesting the 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 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.

BEM 401 defines three types of trusts: Medicaid trusts, Medicaid qualifying trusts (MQTs), and Other trusts. Which policy applies depends on the terms of the trust and when the trust was established. BEM 401, p.1.

BEM 401, p. 5 instructs that a Medicaid trust is a trust that was established on or after August 11, 1993. In the present case, the trust was established on December 14, 1992. Therefore, the trust herein is not a Medicaid trust as defined by BEM 401.

BEM 401, p. 12, 13 instructs that a Medicaid qualifying trust (MQT) is a trust that has all of the following characteristics:

- a. It was established before August 11, 1993.
- b. It is established by a person whose assets must be considered or by that person's spouse.
- c. The person whose assets must be considered is the beneficiary of all or part of the payments from the trust.
- d. The amount distributed from the trust is determined by one or more trustees who are permitted to exercise at least some discretion with respect to the amount to be distributed to the person in (c) above.

In the present case, the trust was established before August 11, 1993 by Claimant. (Exhibit 1, p. 4) Claimant is the beneficiary of all or part of the payments from the trust, and the amount distributed from the trust is determined by trustees who are permitted to exercise some discretion with respect to the amount to be distributed to Claimant. (Exhibit 1, pp. 5, 6) It is noted that the trust is modifiable (Exhibit 1, p. 4) and Claimant may, and has in the past, appointed herself as trustee. (Exhibit 1, p. 2) Therefore, the trust at issue herein is an MQT.

BEM 401, p. 13 instructs that the countable asset amount for an MQT is the maximum payment that could be made from the trust (principal or income) to Claimant as a beneficiary of the trust if the trustee exercised his or her full discretion under the terms of the trust minus actual payments made by the trust to or on behalf of Claimant.

In the present case, Claimant's residential real property at the time of the application was in the MQT trust and countable, as Claimant's trustees could have distributed the value of the real property to Claimant. (Exhibit 1, pp. 5, 6) The real property had a state equalized value of \$ [REDACTED]0. (Exhibit 2, p. 15) It is logical to conclude that Claimant's real property value exceeded the [REDACTED]0 asset limit. See BEM 400, p. 6. Claimant does not assert that the actual payments made to her by the trust in the countable period exceeded the value of the real property or otherwise brought the total asset amount to [REDACTED]. The Department was therefore correct in closing Claimant's MA case due to excess assets.

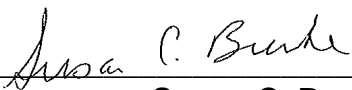
It is noted that the Notice of Case Action did not list the correct reason for closure of Claimant's case, which I find to be harmless error, as an order to reinstate Claimant's MA case as of the date of closure of February 1, 2013 due to the faulty Notice of Case Action would only render another closing due to excess assets.

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 acted correctly in closing Claimant's MA case.

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.

Accordingly, the Department's MA decision is AFFIRMED for the reasons stated within the record.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 2, 2013

Date Mailed: July 2, 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 mailing 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.

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

SCB/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]