

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

IN THE MATTER OF:

[REDACTED]

Reg No: 2013-39273

Issue No: 2021, 3021

[REDACTED]
Crawford County DHS (00)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in person hearing was held on [REDACTED]. Claimant appeared and testified. The Claimant's [REDACTED] of Legal Services of Northern Michigan also appeared. The Department was represented by [REDACTED] AP Supervisor.

ISSUE

Was the Department correct in closing Claimant's Medical Assistance (MA), FAP and QMB case 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 was a recipient of MA benefits.
- (2) Claimant's MA case closed on [REDACTED] due to excess assets.
- (3) Claimant requested hearing on [REDACTED] contesting the closure of MA benefits.
- (4) Claimant owns a parcel of real estate jointly with his sister [REDACTED].
- (5) Claimant inherited the parcel of real estate from his mother and has paid the property taxes.
- (6) Claimant testified that he requested his sister to consent to a sale of the parcel of real estate but she has refused to cooperate.

CONCLUSIONS OF LAW

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, R 400.3001 through Rule 400.3015.

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 (formerly known as the Family Independence Agency) 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 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).

MA ASSET ELIGIBILITY LIF, G2U, G2C, AMP and SSI- Related MA Only

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

Note: Do **not** deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility. Use the special asset rules in **BEM 402** for certain married L/H and waiver patients. See BPG Glossary, for the definition of L/H patient and **BEM 106** for the definition of waiver patient. 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

Department policy defines when assets are "available". **AVAILABLE-- FIP, SDA, LIF, G2U, G2C, SSI-Related MA AMP and FAP** An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400 p.6

JOINTLY OWNED ASSETS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA AMP and FAP

Jointly owned assets are assets that have more than one owner. **Note:** For FTW determinations, jointly owned assets are considered to belong to the initial person. An asset is unavailable if an owner **cannot** sell or spend his share of an asset:

- Without another owner's consent, and
- The other owner is not in the asset group, and
- The other owner refuses consent. BEM 400

In the present case, Claimant's attorney argued that the parcel of real estate was not available to the Claimant because he owns the property jointly and the other joint owner refuses to sell the property. Claimant credibly testified that he has repeatedly asked his sister to cooperate in selling the parcel of real estate but that she has refused to cooperate. Claimant requested that his sister make her wishes known in writing but she refused this request as well. Claimant cannot sell his share of the parcel of real estate without his sister's consent and she refuses to consent. Therefore the parcel of real estate is unavailable to the Claimant and should not be counted as an asset. BEM 400

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was incorrect in the closure of Claimant's MA benefits due to excess assets, and it is **ORDERED** that the Department's decision in this regard be and is hereby **REVERSED**. Claimant's MA, QMB and FAP benefits shall be reinstated going back to the date of closure. Any missed benefits shall be paid to Claimant in the form of a supplement.



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

Date Signed: 06/25/2013

Date Mailed: 06/25/2013

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.

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

AM/kl

cc:

