

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-66826
Issue No.: 2018
Case No.: ██████████
Hearing Date: October 28, 2013
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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, a telephone hearing was held on October 28, 2013, from Detroit, Michigan. Claimant did not appear. Participants on behalf of Claimant included Claimant's wife, ██████████. Participants on behalf of the Department of Human Services (Department) included Inge Ashley, Assistance Payment Worker and ██████████ Metcalf, Family Independence Manager.

ISSUE

Did the Department properly close Claimant's Medical Assistance (MA) case based on 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 was an ongoing recipient of MA benefits.
2. In connection with a redetermination, Claimant's eligibility to receive MA was reviewed.
3. On July 26, 2013, the Department sent Claimant a Notice of Case Action informing him that effective September 1, 2013, his MA case would be closing on the basis that his assets exceeded the limit. (Exhibit 5)

4. On August 29, 2013, Claimant submitted a hearing request disputing the Department's actions.

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 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.

Additionally, the Department testified that Claimant submitted an application for MA benefits at the Department's Conner Service District Office on or around November 28, 2012 and at that time, Claimant was living in a nursing home. (Exhibit 1). The Department testified that after Claimant's case was transferred to its office in the Adult Medical Services District, it realized that there were certain errors in the initial processing of Claimant's application and the calculation of Claimant's patient pay amount, as there was no income or asset information on file for Claimant. The patient pay amount is the client's share of the cost of long term care or hospital services BEM 546 (July 2013), p. 1.

The Department stated that it sent Claimant verification checklists on [REDACTED] and on [REDACTED] that Claimant submit verification of income and assets in order to recalculate the patient pay amount. (Exhibits 2 and 3). Although the Department stated that Claimant's patient pay amount was recalculated, it did not provide any evidence supporting its testimony or what the correct patient pay amount was determined to be.

The Department further stated that Claimant's case was subsequently due for redetermination and in connection with that redetermination, on [REDACTED], the Department sent Claimant a verification checklist requesting that additional income and asset information be provided to the Department by [REDACTED] (Exhibit 4). The Department testified that because the balance in Claimant's shared bank accounts with his wife exceeded the asset limit, he was no longer eligible for MA. On [REDACTED], the Department sent Claimant a Notice of Case Action informing him that effective [REDACTED], his MA case would be closing on the basis that his assets exceeded the limit. (Exhibit 5).

At the hearing, the Department testified that an Initial Asset Assessment (IAA) was never completed in the processing of Claimant's application, as required. The Department is to use the special MA asset rules to determine asset eligibility for the first

period of continuous care that began on or after [REDACTED], if the client has a community spouse and a presumed asset eligible period has not yet been established. BEM 402 (July 2013), p.1.

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse. BEM 402, p.1. The Department will determine initial asset eligibility for MA clients in long term care facility by taking the value of the couple's (his, her, their) countable assets for the month being tested MINUS the protected spousal amount. The resulting figure is the client's countable assets. BEM 402, p. 4. The protected spousal amount is the amount of the couple's assets protected for use by the community spouse and is the greatest of the amounts found using the criteria in BEM 402. BEM 402, p.9. Applicants eligible for MA for the processing month and recipients eligible for the first future month are automatically asset eligible for up to 12 months regardless of changes in the community spouse's assets, or the number of MA applications or eligibility determinations that occur during the period. BEM 402, p. 4.

When the presumed asset eligible period ends, the Department is to use the standard asset rules found in BEM 400 to determine continued asset eligibility for MA benefits. The Department is to count only the client's assets, not the spouse's assets. The presumed eligibility period allows time for the client to transfer assets to the community spouse to make sure that he owns no more than the asset limit for one person. BEM 402, p. 5. The community spouse is not an asset group member and the protected spousal amount is not used. Therefore, the client's own assets must be within the limits of BEM 400. BEM 402, p. 5.

In this case, the Department acknowledged that an IAA was never completed in the initial processing of Claimant's application. Because the IAA could have an impact on the value of Claimant's assets after the presumed eligibility period ends, the Department's action in closing Claimant's MA case based on excess assets at redetermination was not proper.

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 did not act in accordance with Department policy when it closed Claimant's MA case prior to completing an IAA at initial application.

DECISION AND ORDER

Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's MA case effective September 1, 2013;

2. Complete an IAA in accordance with Department policy;
3. Issue supplements to Claimant and his providers for any MA benefits that he was entitled to receive but did not; and
4. Notify Claimant in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 1, 2013

Date Mailed: November 1, 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

ZB/tm

cc:

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