

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201414996
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: January 16, 2014
County: Marquette

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, telephone hearing was held on Thursday, January 16, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, the Claimant's husband, [REDACTED], and Claimant's Attorney, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], APSup, [REDACTED], ES, and [REDACTED], Assistant Attorney General, [REDACTED].

ISSUE

Due to excess assets, did the Department properly deny Claimant's application for Medical Assistance (MA)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, including the testimony at the hearing, finds as material fact:

1. The Claimant applied for MA benefits on September 30, 2013.
2. Due to excess assets, on October 28, 2013, the Department denied Claimant's application.
3. On October 28, 2013, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.

4. On November 19, 2013, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are found 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.

BEM 401, TRUSTS

MEDICAID TRUST DEFINITIONS, page 4

Use the GENERAL DEFINITIONS and these definitions when determining:

Whether a trust is a Medicaid trust, and

What is available from and transferred for a Medicaid trust.

Irrevocable Trust - a trust that is not a revocable trust; see revocable trust in this item.

Resources - all income and assets of a person and the person's spouse. It includes any income and assets the person or spouse is entitled to but does not receive because of action:

By the person or spouse.

By someone else (including a court or administrative body) with legal authority to act in place of or on behalf of the person or spouse.

By someone else (including a court or administrative body) acting at the direction or upon the request of the person or spouse.

Revocable trust - a trust which can be revoked or modified by:

The grantor.

A court.

The trustee.

Any other person or entity.

This includes a trust which allows for revocation or modification only when a change occurs, such as the grantor leaves the LTC facility or the beneficiary becomes competent.

Modify means changing the beneficiaries or the availability of principal or income.

Revocable Trust, page 11

Count as the person's countable asset the value of the countable assets and countable income in the principal of a revocable trust.

Exceptions:

Reduce the countable amount when there are Multiple Contributors.

Do not count the amount if it creates an Undue Hardship.

The modification allowed does not permit distribution of the principal to the person (or his share when there are Multiple Contributors). Use the Irrevocable Trust policy in this item.

Irrevocable Trust, page 11

Count as the person's countable asset the value of the countable assets in the trust principal if there is any condition under which the principal could be paid to or on behalf of the person from an irrevocable trust. Real property (land) left to children in equal shares have no estate tax on the transfer of property,

Count as the person's countable asset the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person. Individuals can keep income made off of property and the money goes to the individual not the trust. Property cannot be taken out of the trust.

COUNTABLE INCOME FROM MEDICAID TRUSTS, page 3

Count as a person's unearned income any payment from a Medicaid Trust that is made to the person or his legal representative.

In [REDACTED], the Claimant was admitted into long term care. The Claimant's spouse attempted to create a solely for the benefit expressly made irrevocable trust on December 18, 2012. Department Exhibit 112-122.

Based on a previous MA application, the Department found that the trust was revocable based on Section 2.1 (cited erroneously where it should be Section 1.5) on August 22,

2013, where the trust can be amended and revoked, which would make the trust a countable asset for the Claimant of all the countable net income and countable assets in the principal of the trust. In addition, the Claimant's spouse was assigned to have an initial distribution from the trust beginning after December 1, 2012, but before August 13, 2013. The total amount that was payable or was paid from the trust to the Claimant's spouse of the principal and net income would be counted as a countable asset to the Claimant's spouse that may affect his community spouse allowance limit. Department Exhibit 25-28.

On September 18, 2013, the Claimant's attorney's paralegal sent an email (Department Exhibit 14) to the Department stating that the trust has been amended on September 16, 2013 to correct the problem outlined in the DHS memo dated August 22, 2013 to change the first annual distribution for after December 1, 2013, but before May 31, 2014. Department Exhibit 10-11. The Department was also informed that no disbursements had been made to the Claimant's spouse. Department Exhibit 14. In addition, the trust has approximately the same asset value as it did in June 2013. Department Exhibit 14. The defect in the trust was due to an inadvertent typographical mistake where an amendment corrected the mistake back to the date that the trust was signed in December 2012. Department Exhibit 22.

On October 22, 2013, the Department found that the trust was now irrevocable not revocable as cited in August 22, 2013 memo and did not need to be amended as being solely for the benefit of, but since it was amended that the amendment would not be recognized because the terms of the trust do not permit it to be amended or modified for this purpose so as to comply with the provisions of 42 USC 1396d3B. As a result, the trust assets are available and thus countable.

On December 12, 2013, the Claimant's attorney provided a value of the trust at [REDACTED] when the account was opened on November 11, 2013. Claimant Exhibit A.

On January 7, 2014, the Claimant's Attorney submitted a memo stating that paragraph 1.5 gives the Trustee authority to amend the trust for two (2) purposes: 1) to make sure it qualifies as a sole benefit trust under 42 USC 1396pc2b; and 2) to make sure that the trust complies with the Michigan DHS MA manual. The Claimant's Attorney argues that the whole purpose of creating a trust was to achieve MA eligibility for the Claimant by not just qualifying the trust as a solely for the benefit, but also to avoid the availability of the rules of BEM 401, page 11. In addition, Section 7111(3)(a) of the Michigan Trust Code allows the Trustee to amend a trust in order to correctly construe a trust where adjusting the start date from December 1, 2012 to December 1, 2013, of the trust constitutes a "construction" of this provision of the trust. Claimant Exhibit 1-5.

On January 15, 2014, the Assistant Attorney General submitted a memo stating that a solely for the benefit trust (SBOT) that was funded with excess assets that would disqualify the Claimant for qualifying for MA, was executed for the Claimant's husband in order to keep assets in excess of those normally permitted for the Claimant, as a MA

long-term care beneficiary. Section 1.5 of the trust agreement stated that it was an irrevocable trust, but allowed the Trustee to amend the trust in any matter required to ensure that the trust qualifies for and continues to qualify for as a SBOT under the provisions of 42 USC 1396pc2B and the MDHS BEM in effect at this date or as amended in the future. MA policy does allow transfers to spouses without characterizing them as divestment, but all assets of both spouses are still counted in the analysis to determine if there are excess assets that would disqualify someone from receiving benefits. The Assistant Attorney General argues that the Claimant's Attorney is trying to change the SBOT to avoid assets being counted as excess assets, which is not permitted by the terms of the SBOT. As a result, the SBOT does not permit amendments to resolve the excess asset problem. Therefore, the amendment cannot be made to shield excess assets over the community spouse resource allowance from being counted. According to the Assistant Attorney General, the SBOT meets all the characteristics of a MA trust of being irrevocable with the Claimant's spouse able to receive distributions from the trust resulting in all assets in the trust being countable. Department Exhibit A-C.

This Administrative Law Judge finds that this SBOT is revocable based on the language of the trust found in section 1.5 of the trust agreement: Trustee, however, shall have the power, acting alone, to amend the Trust in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as a "solely for the benefit of" trust within the meaning of the provisions of 42 USC 1396pc2B and the Michigan Department of Human Services Program Eligibility Manual in effect at this date or as later amended. As a result, all the assets and income of the trust are countable as an asset of the Claimant's spouse. Therefore, the Claimant's spouse has excess assets over the amount of his Community Spouse Allowance, which means the Claimant's Application for MA was properly denied because of excess assets.

The Administrative Law Judge, based upon 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 the Claimant's MA application due to excess assets..

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.



Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 7, 2014

Date Mailed: February 7, 2014

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

CGF/aca

cc:

