

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201416911
Issue No(s): [REDACTED]
Case No.: [REDACTED]
Hearing Date: February 6, 2014
County: Branch

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 February 6, 2014, from Lansing, Michigan. Participants on behalf of Claimant included his authorized hearing representative [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Medical Eligibility Worker [REDACTED] and AP Supervisor [REDACTED].

ISSUE

Did the Department properly deny Claimant Medical Assistance (MA) coverage for July 2013, through September 2013, for 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. On October 7, 2013, an application for Medical Assistance (MA) and retroactive Medical Assistance (MA) for July, August and September 2013 was submitted on behalf of Claimant.
2. On October 11, 2013, Claimant was sent notice that he was eligible for October 2013 forward but the retroactive Medical Assistance (MA) was denied due to excess assets.
3. On December 5, 2013, a request for hearing was submitted on Claimant's behalf.

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), and Department of Human Services Reference Tables Manual (RFT).

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.

The denial of retroactive coverage occurred over questions about certification of irrevocable funeral contracts. The Department reports that Claimant's applications of July 18, 2011, June 23, 2012, August 30, 2013, and October 7, 2013, are not consistent in their listing of burial assets. This record contains considerable documentary evidence of past funeral service contracts, which contracts were certified when, and which contracts had not been certified. However, the pivotal issue in this case is the Department's process for certification of irrevocable funeral contracts.

The path to this pivotal issue begins with the fact that all of Claimant's funeral contracts were certified as irrevocable on October 7, 2013. The Department did not deny retroactive coverage because Claimant's funeral assets were deemed revocable. The coverage was denied because all of the funeral assets had not been certified as irrevocable until October 7, 2013.

Department of Human Services Bridges Administration Manual (BAM) 805 Prepaid Funeral Contracts (2013) identifies the required conditions to certify contracts irrevocable on pages 3-6. The policy states "The local office director or his designee is authorized to certify agreements irrevocable." The specific condition upon which the local office based the denial is "Ten or more business days have passed since all parties signed the contract. The purchaser may cancel the contract during this period."

The local office representatives referred to a required ten day period before a funeral contract could be certified irrevocable. They asserted a funeral contract could not be certified as irrevocable until 10 days after it was submitted to the Department. More important, they referred to the date of certification, as the first date that a certified irrevocable funeral contract would not be counted as an asset regardless of the date of the contract. That interpretation resulted in the local office counting the assets for all time periods prior to their certification date. Subsequently the irrevocable funeral contracts dated from years earlier but only certified on October 7, 2013, were counted as assets for the months of July, August and September 2013 Medical Assistance (MA) eligibility and Claimant was not eligible due to excess assets.

There is a significant flaw with this interpretation. It means that very few applicants with an irrevocable funeral contract will be approved for retroactive Medical Assistance (MA). Funeral contracts are not submitted to the Department until a person applies for

coverage. If their irrevocable funeral contract is not certified until the month of application and must be counted as an asset for all periods prior to certification, many applicants will be excess assets during requested retroactive months.

The interpretation caused funds which have not been legally available to Claimant for years to be counted against him as available assets. The Department's role in certifying a funeral contract to be irrevocable is a verification function. The Department's certification does not make any difference in the legal relationship between an applicant and the entity the applicant has contracted with. There is nothing in Department policy which provides for a Medical Assistance (MA) asset eligibility determination to be based on the first date a funeral contract is submitted to the Department. The Department action in this particular case is contrary to Department policy.

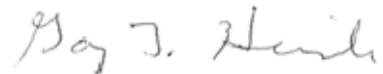
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied Claimant Medical Assistance (MA) coverage for July 2013 through September 2013 for excess assets.

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 October 7, 2013 retroactive Medical Assistance (MA) application.
2. Conduct a Medical Assistance (MA) eligibility analysis for July 2013 through September 2013, based on Department policy.



Gary F. Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 02/25/2014

Date Mailed: 02/26/2014

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

GFH/sw

cc:

