

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24453
Issue No(s): [REDACTED]
Case No.: [REDACTED]
Hearing Date: March 5, 2014
County: Antrim

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 March 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included her son, [REDACTED], and her attorney [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], General Services Program Manager [REDACTED] and AAG [REDACTED].

ISSUE

Did the Department properly deny Claimant December 12, 2013 Medical Assistance (MA) application due to 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 December 12, 2013, a Medical Assistance (MA) application was submitted for Claimant.
2. A copy of the [REDACTED] Living Trust was submitted as part of the required verification of assets. The trust owns a mobile home located at [REDACTED], [REDACTED] and assessed to have a value of [REDACTED]. (Pages 14 & 15) The mobile had been for sale by owner, for approximately two years before the Medical Assistance (MA) application.
3. On January 16, 2014, Claimant was sent a Notice of Case Action (DHS-1605) which stated the application was denied due to excess assets.
4. On January 23, 2014, Claimant submitted a request for hearing.

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.

One single, specific asset is the basis of Claimant's disagreement with the Department's determination. That asset is the mobile home located at [REDACTED], [REDACTED]. The mobile home is owned by the [REDACTED] Living Trust and assessed to have a value of [REDACTED]. (Pages 14 & 15) The mobile home had been for sale by owner for approximately two years before the Medical Assistance (MA) application. Advertisement of the sale was limited to the sign in the front yard.

Claimant asserts the mobile home should not be counted because it is a non-salable asset in accordance with Department of Human Services Bridges Eligibility Manual (BEM) 400 Assets pages 12 & 13.

- **NON-SALABLE ASSETS**
- **SSI-Related MA Non-Salable Assets**
- **SSI-Related MA Only**

Give the asset a [REDACTED] countable value when it has no current market value as shown by one of the following:

Two knowledgeable appropriate sources (example: realtor, banker, stockbroker) in the owner's geographic area state that the asset is **not** salable due to a specific condition (for example, the property is contaminated with heavy metals). This applies to any assets listed under:

- I. Investments.
- II. Vehicles.
- III. Livestock.
- IV. Burial Space Defined.
- V. Employment and Training Assets.
- VI. Homes and Real Property (see below).

In addition, for homes, life leases, land contracts, mortgages, and any other real property, an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. The asset becomes

salable when a reasonable offer is received. Count an asset that no longer meets these conditions.

For applicants, an active attempt to sell must have started at least 90 days prior to application and must continue until the property is sold. For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An active attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper, and is currently listed with a licensed realtor.

The Department asserts the mobile home cannot be classified as non-salable because it was not listed with a licensed realtor. Claimant asserts that the requirements in BEM 400 are more stringent than in Michigan's State Plan Under Title XIX of the Social Security Act. (Page 134)

Un-Salable property is not a resource. The property is un-salable when either:

- a) Two knowledgeable sources state the property is un-salable due to a specific condition, or
- b) an actual sale attempt is made and no reasonable offer to purchase has been received.

Claimant points out that the State Plan only requires an actual sale attempt. BEM 400 is inconsistent with the State Plan because BEM 400 describes both an *actual sale attempt* and an *active attempt to sell*. Claimant asserts that having the property for sale by owner, below fair market value, for two years is an actual sale attempt and meets the requirements of the State Plan. Claimant further asserts that compliance with the State Plan should make the asset a \$0 countable value.

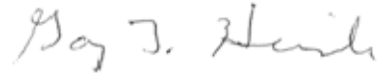
Claimant's argument centers on the validity of the Department's current policy. The ruling Claimant desires is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

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 acted in accordance with Department policy when it denied Claimant December 12, 2013 Medical Assistance (MA) application due to excess assets.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



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

Date Signed: March 17, 2014

Date Mailed: March 18, 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

2014-24453/GFH

GFH/nk

cc:

