

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201426070
Issue No: 2004
Case No: [REDACTED]
Hearing Date: April 3, 2014
Benzie County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's authorized representative's request for a hearing received by the Department of Human Services (Department) on November 12, 2013. After due notice, a telephone hearing was held on April 3, 2014 from Lansing, Michigan. Claimant's authorized representative, attorney [REDACTED] [REDACTED] (P66983), appeared and provided testimony on Claimant's behalf. The Department was represented by [REDACTED] [REDACTED] an eligibility specialist, and [REDACTED], a general services program manager, both of whom are with the Department's Benzie County office.

ISSUE

Whether the Department properly determined Claimant's eligibility for Medicaid benefits effective June 1, 2013?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On May 24, 2013, Claimant entered a nursing home.
2. On June 29, 2013, Claimant applied for MA benefits.
3. On September 13, 2013, the Department mailed Claimant an Initial Assessment Notice, advising that Claimant's spouse was entitled to a protected spousal asset amount of [REDACTED] and Claimant was entitled to \$2,000.00 in countable assets.
4. On October 23, 2013, the Department notified Claimant that his June 29, 2013 MA application had been denied due to excess assets.
5. On November 12, 2013, Claimant's authorized representative submitted a hearing request on Claimant's behalf, arguing that the Department

failed to apply the “presumed asset eligible period” to Claimant’s application, as required by BEM 402.

6. On February 7, 2014, the Department determined that, due to agency error, the Department had erroneously denied Claimant’s June 29, 2013 MA application for the benefit period effective June 1, 2013 due to excess assets because the Department had improperly included Claimant’s spouse’s assets when such assets were within the presumed asset eligible period.
7. On February 7, 2014, the Department submitted a Help Desk remedy ticket request (#BR0046596) to correct the computer error and approve Claimant’s eligibility for MA benefits effective June 1, 2014.

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The MA program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies for the MA program are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RFT).

The Department determines a client’s eligibility for MA benefits based on, among other things, the client’s assets. BEM 400. Effective October 1, 2011, the MA asset limit for a group size of one is \$2,000 and for a group size of two, the asset limit is \$3,000. BEM 400, pp. 4-5.

Countable assets cannot exceed the applicable asset limit. BEM 400. An asset must be available to be countable. BEM 400. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400. 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 other owner refuses consent. BEM 400.

Department policy further provides that when a couple ceases to live together, the agency must count only income of the individual spouse in determining his or her eligibility, beginning the first month following the month the couple ceases to live together. 42 CFR 435.602(a)(3). The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. BEM 402, p. 8. It is the **greatest** of the amounts set forth below:

- \$23,184 effective January 1, 2013;
- \$22,728 effective January 1, 2012;
- \$21,912 effective January 1, 2010;
- \$21,912 effective January 1, 2009;
- \$20,880 effective January 1, 2008;
- \$20,376 effective April 1, 2007; or

one-half the initial asset assessment amount but **not** more than:

- \$115,920 effective January 1, 2013;
- \$113,640 effective January 1, 2012;
- \$109,560 effective January 1, 2010;
- \$109,560 effective January 1, 2009;
- \$104,400 effective January 1, 2008;
- \$101,880 effective April 1, 2007; or

the amount determined in a hearing per BAM 600; or

the amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to: pay support to the community spouse, and, transfer assets to the community spouse for the support of the community spouse or a family member. BEM 402, p. 8. (Emphasis in original)

Department policy further provides that, with respect to SSI-related MA, applicants eligible for the **processing month** and recipients eligible for the first future month are automatically asset eligible for up to 12 calendar 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 (Emphasis in original). The 12-month period begins with the month following the processing month and is called the presumed asset eligible period. BEM 402.

In this case, on October 23, 2013, the Department notified Claimant that his June 29, 2013 MA application had been denied due to excess assets. However, at the April 3, 2014 hearing, the Department's representative, Lois Keil, acknowledged that the Department had erroneously denied Claimant's June 29, 2013 MA application for the benefit period effective June 1, 2013 due to excess assets because the Department had improperly included Claimant's spouse's assets when such assets were within the presumed asset eligible period. Consequently, the Department submitted a Help Desk remedy ticket request (#BR0046596) on February 7, 2014 to correct the computer error

and approve Claimant's MA eligibility for the benefit period effective June 1, 2014. To date, the Help Desk remedy ticket remains unresolved.

In response to Ms. Kiel's testimony, Claimant's authorized representative testified that she would be satisfied with the resolution achieved by the expedited processing of the Department's Help Desk remedy ticket submitted on February 7, 2014.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the April 3, 2014 hearing, the Department improperly denied Claimant's June 29, 2013 MA application for the benefit period effective June 1, 2013 due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department improperly denied Claimant's June 29, 2013 MA application for the benefit period effective June 1, 2013 due to excess assets. Accordingly, the department's actions in this regard are **REVERSED** and the department shall, within 10 days of the issuance of this Decision and Order, do the following:

1. Reinstate and approve Claimant's June 29, 2013 MA application for the benefit period effective June 1, 2013;
2. Issue Claimant any supplemental MA benefits to which he was entitled in accordance with the applicable department policy;
3. Take the necessary steps to ensure the computer problem is resolved.

It is **SO ORDERED**.



Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 9, 2014

Date Mailed: April 9, 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

SDS/hj

cc:

