

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201430821
Issue No(s): 2001
Case No.: [REDACTED]
Hearing Date: April 15, 2014
County: Gladwin County DHS

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 April 15, 2014, from Lansing, Michigan. Participants on behalf of Claimant included: [REDACTED] his daughter, guardian and conservator; his step daughter Ms. [REDACTED] and Ms. [REDACTED] the business office manager at Claimant's nursing facility. Participants on behalf of the Department of Human Services (Department) included ES [REDACTED]

ISSUE

Did the Department properly determine that Claimant was not eligible for Medical Assistance for the month of October 2013 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 October 23, 2013, a \$ [REDACTED] check was written to [REDACTED] against Claimant's bank account.
2. On October 25, 2013, a Medicaid Application Patient of Nursing Facility (DHS-4574) was submitted for Claimant.
3. On October 31, 2013, a receipt for the \$ [REDACTED] was made out by [REDACTED].
4. On November 4, 2013, the \$ [REDACTED] check to [REDACTED] cleared from Claimant's bank account.

5. On January 23, 2014, a Notice of Case Action (DHS-1605) was issued from the Department stating Claimant was not eligible for Medical Assistance in October 2013 due to excess assets.
6. On February 27, 2014, [REDACTED] submitted a hearing request.

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.

Claimant's income and assets were meticulously managed toward the end of his eligibility for Medical Assistance. The \$ [REDACTED] check was written to [REDACTED] two days before the application, in anticipation that it would have cleared before the end of October. However, the evidence clearly shows that the check did not clear until November 4, 2013. Claimant's family correctly asserts that the later clearance of the check was beyond their control.

As a strictly legal principle, receipt of the check gave [REDACTED] a legal claim for the amount of the check. However, until the check cleared [REDACTED] did not have possession of the money represented by the check. Until the check cleared, Claimant still had possession of the money in his bank account.

Claimant's assertions invoke a request for equity. Because the presence of the money in the account during all of October was not attributable to Claimant, it is not fair that Claimant had excess assets for October. Equitable jurisdiction 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:

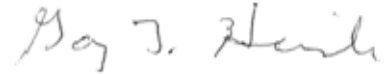
Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curiam of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

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 determined that Claimant was not eligible for Medical Assistance for the month of October 2013 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: May 7, 2014

Date Mailed: May 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

201430821/GFH

Lansing, Michigan 48909-07322

GFH/hj

cc:

