

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-69446
Issue No(s): 2001
Case No.: [REDACTED]
Hearing Date: April 24, 2014
County: Chippewa County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on April 24, 2014, from Sault Ste. Marie, Michigan. Participants on behalf of Claimant included [REDACTED], Attorney, [REDACTED], Legal Assistant, and [REDACTED], wife. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly deny the Claimant's May 31, 2013 Medicaid application based on assets in excess program limits?

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 14, 2012, an Initial Asset Assessment Notice was issued to Claimant stating the amount of assets that could be kept by his spouse was \$ [REDACTED] and \$ [REDACTED] for Claimant.
2. On May 31, 2013, a Medicaid application was filed on Claimant's behalf.
3. The Department determined that the total value of assets for Claimant and his wife was \$ [REDACTED]
4. On July 15, 2013, a Notice of Case Action was issued to Claimant stating the Medicaid application was denied because the value of countable assets is higher

than allowed for this program and verification of unearned income payment was not returned.

5. On August 29, 2013, a request for hearing was filed on Claimant's behalf contesting the Department's action.

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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code, R 400.904(1). Moreover, BAM 600 (10-1-2012), p. 4, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

This portion of the BAM 600 policy remained unchanged through the time of Claimant's August 29, 2013 appeal. BAM 600 (7-1-2013), p. 5.

In part, Claimant's August 29, 2013, request for hearing contested the December 14, 2012, Initial Asset Assessment determination and the denial of a January 31, 2013, Medicaid application. The hearing rights portion of the December 14, 2012, Initial Asset Assessment Notice indicates Claimant may appeal the Initial Asset Assessment determination after an application for Medicaid has been made and that the deadline for requesting a hearing is 90 days from the date of the notice regarding the Medicaid eligibility. It was uncontested that Claimant previously appealed the Department's denial of the January 31, 2013 Medicaid application, an Administrative Hearing was held, a Decision and Order was issued, and rehearing/reconsideration was requested, which was still pending at the time the April 24, 2014 in person hearing was held. There is insufficient evidence to establish that Claimant's August 29, 2013 request for hearing was filed within 90 days of the notice regarding the Medicaid eligibility for the January 31, 2013 Medicaid application. Further, Claimant had already appealed the denial of the January 31, 2013 Medicaid application, received a decision from the Administrative Hearing and requested a re-hearing/reconsideration. Accordingly, this ALJ has no jurisdiction to review the December 14, 2012, Initial Asset Assessment and the denial of a January 31, 2013, Medicaid application.

There is jurisdiction to review the remaining contested issue, the July 15, 2013 denial of Claimant's May 31, 2013, Medicaid application based on assets in excess program limits.

Asset eligibility is required for Medicaid. Assets means cash, other personal property, and real property. Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. The asset limit is \$ [REDACTED] for a group of one and \$ [REDACTED] for a group of two. However, special asset rules apply for certain married Long Term Care or Hospital (L/H) and waiver patients. BEM 400 (5-1-2013) pp. 1 and 4-6.

Cash assets include: money/currency; uncashed checks, drafts and warrants; checking and draft accounts; savings and share accounts; money market accounts; LTC patient trust fund and all other money held by the facility for the patient; money held by others; and time deposits. BEM 400 p. 11.

An initial asset assessment is required to determine how much of a couple's assets are protected for the community spouse. An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989. BEM 402 (1-1-2013) pp. 6 (emphasis in original).

In this case, the December 14, 2012, Initial Asset Assessment determination was that the amount of assets that could be kept by Claimant's spouse was \$78,666 and Claimant may keep \$2,000 while on MA. (Exhibit A, p. 14) The December 14, 2012, Initial Asset Assessment determination still applied when Claimant re-applied for Medicaid on May 31, 2013.

It appears that with the May 31, 2013 Medicaid application, a chart was provided asserting the value of Claimant's assets was \$ [REDACTED] and the value of Claimant's wife's assets was \$ [REDACTED] (Exhibit A, p. 1) However, the Department determined that the total value of assets for Claimant and his wife was \$ [REDACTED] (Exhibit A, p. 11) Specifically, the Department's entries of Claimant's wife's assets totaled \$ [REDACTED] and Claimant's assets totaled \$ [REDACTED] (Exhibit A, pp. 9-10)

In comparing the Claimant's asset chart to the Department's asset entries there are discrepancies with the values of a joint Chase checking account as well as Claimant's wife's: new Chase checking account, Chase savings account, First National Bank checking account, IRA with Chase, life insurance with United of Omaha, and IRA Chase brokerage account. (Exhibit A, pp. 1 and 9-10)

It appears that the Department counted the entire value of the joint checking account, \$ [REDACTED] as Claimant's asset, rather than counting half the value toward the countable assets for the Claimant and the remaining half toward Claimant's wife's countable assets. (Exhibit A, pp. 1 and 9-10) The Department policy addresses cash assets owned jointly by an L/H or waiver patient and spouse:

- If the spouse is an MA-only client or receives FIP or SSI, each spouse owns an equal share unless otherwise claimed and verified.

- If the spouse is **not** an MA-only client and does **not** receive FIP or SSI, consider the asset totally available unless otherwise claimed and verified.

BEM 400 p.9. The evidence presented at this hearing was not sufficient to determine whether Claimant's wife is an MA-only client or whether she receives FIP or SSI. Further, the July 3, 2013 email from Claimant's attorney to the Eligibility Specialist indicates that this joint account at Chase was the only item still in a trust. (Exhibit , p. 15) Trust principal is considered an available asset of the person who is legally able to: direct use of the trust principal for his needs; direct that ownership of the principal revert to himself. BEM 401 (5-1-2013) p. 13. Insufficient information was provided at this hearing to determine the type of trust the joint checking account is in. Accordingly, the evidence submitted at this hearing was insufficient to determine if the value of the joint checking account was properly counted solely as Claimant's asset.

Additionally, there appears to be a small difference in the values of the life insurance with United of Omaha and IRA Chase brokerage account. (Exhibit A, pp. 1 and 9-10) The total of the differences is a just over \$ [REDACTED] The verifications for these assets were not submitted as evidence for this hearing. Accordingly, the evidence is insufficient to determine that the Department properly entered the countable values for these assets.

Lastly, the bulk of the difference of the asset values is based on checks the Claimant's wife wrote on May 29, 2013, which did not clear the bank until early June 2013. It appears the value of the uncashed checks was at least \$ [REDACTED] These checks were

written off of Claimant's wife's checking accounts with both Chase and First National Bank. (Exhibit 1, p. 5-6) It also appears that funds were transferred from the Chase savings account to the Chase checking account to cover the checks written off the Chase checking account. (Exhibit 1, p. 11)

An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400 p. 7. However, when addressing the value of cash the Department policy further specifies:

The value of the types of assets described above is the amount of the:

- Money/currency.
- **Uncashed check, draft or warrant.**
- Money in the account or on deposit.
- Money held by others.
- Money held by nursing facilities for residents.
- Money in the Direct Express account.

BEM 400 p.13 (emphasis added by ALJ).

Further, the policy addressing verification sources for a checking or draft account includes using a monthly statement with a note that examination of checkbook is **not** sufficient. BEM 400 p. 44 (emphasis in original). A similar principal applies regarding the copies of checks written on May 29, 2013 provided in this case. For example, a check that is written but not cashed could have a stop payment applied by the issuer. An individual may also chose to use funds still available in a checking account because a written check has not yet been cashed and run the associated risks, such as overdraft or nonpayment based on insufficient funds, unless sufficient funds are added before the check clears.

The Eligibility Specialist testified she utilized the bank statements to determine the countable asset values for the checking and savings accounts. The Eligibility Specialist did not reduce these values based on the checks Claimant's spouse had written May 31, 2013 because these checks had not been cashed by the end of the month. Claimant's attorney asserted the amounts from these checks were not available as defined by BEM 400. He notes the checks are legal tender and the negotiable instruments were given to the payees on May 29, 2013. Since the cash was tendered by negotiable instrument to another party it was not "available." However, the more specific BEM 400 provision is clear that uncashed checks are counted as an asset. Accordingly, in determining the countable assets for the month of May 2013 the Department properly utilized the values from the bank statements, and did not exclude the value of the uncashed checks.

The Initial Asset Assessment determination was that the amount of assets that could be kept by Claimant's spouse was \$ [REDACTED] (Exhibit A, page 14) Claimant asserted his wife's assets totaled \$ [REDACTED] for May 2013. (Exhibit A, page 1) Claimant's asserted

value did not include the value of the uncashed checks. Accordingly, when the value of the uncashed checks is counted, at least \$ [REDACTED] Claimant will be over the asset limit for Medicaid. The small discrepancies with the values of the joint savings, life insurance with United of Omaha and IRA Chase brokerage account will not change this result. Therefore, the Department's determination to deny the May 31, 2013 Medicaid application based on excess assets must be upheld.

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's May 31, 2013 Medicaid application.

DECISION AND ORDER

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



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 17, 2014

Date Mailed: June 17, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

201369446/CL

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

CL/hj

cc:

