

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 14-004430
Issue No(s): 2001
Case No.: [REDACTED]
Hearing Date: August 28, 2014
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 August 28, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Authorized Hearing Representative (AHR) [REDACTED]
[REDACTED] (witness/Claimant's daughter); [REDACTED] (witness/Claimant's son-in-law); and [REDACTED] (witness/grandson). Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA) application dated March 26, 2014, retroactive to December 2013?

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 March 26, 2014, Claimant's Authorized Representative (AR) applied for MA benefits on behalf of the Claimant, retroactive to December 2013. See Exhibit 1, pp. 5-12.
2. On March 26, 2014, Claimant's application indicated she only had one bank account ending in -4580 and provided bank statements for time period of August 26, 2013 to March 3, 2014. See Exhibit 1, pp. 5-16.

3. On an unspecified date, the Department discovered that Claimant was also listed as a co-owner on an additional bank account ending in -0355. See Exhibit 1, pp. 17-30.
4. On an unspecified date, the Department received banks statements for account ending -0355 regarding the time period of December 27, 2013 to February 27, 2014. See Exhibit 1, pp. 17-30.
5. On May 16, 2014, the Department sent Claimant a Health Care Coverage Determination Notice (determination notice) notifying Claimant that her MA application was denied effective December 1, 2013, ongoing, due to the combined total of bank accounts being over the allowable limit of \$2,000.00 (excess assets). See Exhibit 2, pp. 1-5.
6. On June 10, 2014, Claimant's AHR filed a hearing request, protesting the MA denial. See Exhibit 1, pp. 2-5.

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.

Assets must be considered in determining eligibility for FIP, SDA, RCA, G2U, G2C, RMA, SSI-related MA categories, and FAP. BEM 400 (February 2014), p. 1. Asset eligibility is required for G2U, G2C, RMA, and SSI-related MA categories. BEM 400, p. 5. 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. BEM 400, p. 6.

For all other SSI-related MA categories, the asset limit is \$2,000 for an asset group of one or \$3,000 for an asset group of two. BEM 400, p. 7. This case involves only a group size of one.

For SSI-Related MA only, an asset must be available to be countable. BEM 400, p. 8. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 8. The Department assumes an asset is available unless

evidence shows it is not available. BEM 400, p. 8. Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. BEM 400, p. 9.

Jointly owned assets are assets that have more than one owner. BEM 400, p. 10. 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
- The other owner refuses consent.

BEM 400, p. 10.

For joint cash and retirement plans, the Department counts the entire amount unless the person claims and verifies a different ownership. BEM 400, p. 11. Then, each owner's share is the amount they own. BEM 400, p. 11. For SSI-Related MA cases, money/currency, checking and drafts accounts, savings and share accounts, and money market accounts are types of cash assets. BEM 400, pp. 13-14.

In this case, on March 26, 2014, Claimant's AR applied for MA benefits on behalf of the Claimant, retroactive to December 2013. See Exhibit 1, pp. 5-12. On March 26, 2014, Claimant's application indicated she only had one checking account ending in -4580 and provided bank statements for time period of August 26, 2013 to March 3, 2014. See Exhibit 1, pp. 5-16. The account ending in -4580 includes the Claimant and her daughter/witness. See Exhibit 1, p. 15.

On an unspecified date, the Department testified that on Claimant's transaction history it discovered a transfer from account -4580 to a different account ending in -0355. See Exhibit 1, p. 14. Thus, upon further review, Claimant was also listed as a co-owner on a checking account ending in -0355. See Exhibit 1, pp. 17-30. It should be noted the AHR testified that Claimant's daughter/witness would transfer the funds from -4580 to -0355 in order to pay Claimant's bills. On an unspecified date, the Department received bank statements for account ending -0355 regarding the time period of December 27, 2013 to February 27, 2014. See Exhibit 1, pp. 17-30. It should be noted that the Department testified that Claimant has Retirement, Survivors, and Disability Insurance (RSDI) income of \$430.90. See Exhibit 1, p. 13. The Department does not count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 20.

Nevertheless, the Department testified that the combined total of assets (accounts -4580 and -0355) after deduction of income per month is over the allowable limit of \$2,000. Thus, on May 16, 2014, the Department sent Claimant a determination notice notifying Claimant that her MA application was denied effective December 1, 2013, ongoing, due to excess assets. See Exhibit 2, pp. 1-5.

At the hearing, the Department testified as to the balances of the checking account ending in -4580 for the time period of December 2013 to March 2014. See Exhibit 1, pp. 5-16. Claimant's AHR agreed that the account ending in -4580 is a countable asset

and did not have any dispute with the balances used. If the Department only determined Claimant's asset eligibility using account -4580, she would have been below the \$2,000 limit. However, the Department alleged that Claimant had exceeded the \$2,000 asset limit because it also considered checking account -0355 as a countable asset.

A review of account -0355 indicates that there are three account owners, which includes two of the witnesses who were present for the hearing and the Claimant. See Exhibit 1, p. 18. There is an "or" listed between all three of the co-owners. See Exhibit 1, p. 18. Based on this information, the Department alleged that account -0355 is a countable asset because Claimant is listed as a co-owner. However, the AHR and the witnesses argued that Claimant was a beneficiary for the account and did not have any access to the funds. The AHR testified that Claimant is 99-years-old and has dementia. Moreover, Claimant's witnesses (the two other account owners) testified that Claimant has no access to the funds and was only intended to be a beneficiary on the account in case something happened to them. There was no documentary evidence provided to show that Claimant was a beneficiary on the account. It should be noted that the evidence presented that no verification was requested to resolve the asset discrepancy for account ending in -0355.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2014), p. 1. The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. BAM 130, p. 3.

The Department obtains verification when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130, p. 1. The questionable information might be from the client or a third party. BAM 130, p. 1. Moreover, before determining eligibility, the Department gives the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130, p. 8.

Based on the foregoing information and evidence, the Department improperly denied Claimant's MA application dated March 26, 2014, retroactive to December 2013.

The evidence presented a discrepancy as to whether the account ending in -0355 should be a countable asset. During the hearing, the actual witnesses/co-owners of the accounts credibly testified that Claimant has no access to the funds and that she was only intended to be a beneficiary. Moreover, it cannot be overlooked that Claimant is 99-years-old with dementia. As such, the evidence presented a discrepancy as to whether the account ending in -0355 should be a countable asset. See BEM 400, pp. 8-14. Because there is an asset discrepancy present, the Department failed to give the Claimant a reasonable opportunity to resolve the discrepancy (i.e., request verification). See BAM 130, pp. 1-8. Therefore, the Department will reregister and process

Claimant's MA application dated March 26, 2014, retroactive to December 2013, in accordance with Department policy.


DECISION AND ORDER

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 did not act in accordance with Department policy when it improperly denied Claimant's MA application dated March 26, 2014, retroactive to December 2013.

Accordingly, the Department's MA 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. Reregister the MA application dated March 26, 2014, retroactive to December 2013;
2. Begin reprocessing the application/recalculating the MA budget for December 2013, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any MA benefits she was eligible to receive but did not from December 1, 2013, ongoing; and
4. Notify Claimant and the AR in writing of its decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 10, 2014

Date Mailed: September 10, 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:

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

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]