

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-009181  
Issue No.: 2001  
Case No.: [REDACTED]  
Hearing Date: October 21, 2014  
County: Macomb (12) (Mt Clemens)

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

**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 three-way telephone hearing was held on October 21, 2014, from Lansing, Michigan. Participants on behalf of Claimant included her attorney, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Hearings Facilitator [REDACTED], and Department Specialist (DHS Office of Legal Services) [REDACTED]. Assistant Attorney General [REDACTED] represented the Department.

**ISSUE**

Did the Department properly find that all assets in the irrevocable trust for the sole benefit of Claimant's spouse were countable in determining Claimant's eligibility for Medical Assistance (MA)?

**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 January 10, 2014, Claimant's spouse established an irrevocable trust.
2. The trust was not established by a will.
3. The trust, in Section 2.2, directs the distribution of trust assets as follows:
  - "2.2. **Distribution of Resources.** During each fiscal year of the Trust, Trustee shall from time to time during the fiscal year pay or distribute to me, or for my sole benefit, during my lifetime whatever part of the net income and principal (the Resources) of the Trust that Trustee determines is necessary to distribute the resources in an actuarially sound basis. However, during the first fiscal year of

the Trust, the distribution shall be made to me after January 10, 2014, but before December 31, 2014.”

4. The trust does not meet the conditions of an Exception A, Special Needs Trust; or an Exception B, Pooled Trust.
5. On March 7, 2014, Claimant applied for MA.
6. The Department concluded that “the countable assets for [REDACTED] is (sic) the value of all the countable net income and the countable assets in the principal of the trust.” (Exhibit 1 Page 4.)
7. The Department concluded that the transfer of assets into the trust for [REDACTED] was not a divestment. Id.
8. The Department received Claimant's hearing request on July 30, 2014.

### 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.

Claimant applied for MA and her application was denied due to excess assets. Per BEM 400 (2/1/14) p. 7, the MA limit is [REDACTED] for an individual and [REDACTED] for a couple.

BEM 405 (7/1/14) sets forth the policy the Department is to follow when there is a “divestment”. At page 1,

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals; see BEM 169.

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see RESOURCE DEFINED below and in glossary) by a client or his spouse that are all of the following:

Is within a specified time; see LOOK-BACK PERIOD in this item.

Is a transfer for LESS THAN FAIR MARKET VALUE; see definition in glossary.

Is not listed below under TRANSFERS THAT ARE NOT DIVESTMENT

**Note:** See Annuity Not Actuarially Sound and Joint Owners and Transfers below and BEM 401 about special transactions considered transfers for less than fair market value.

During the penalty period, MA will **not** pay the client's cost for:

- LTC services.
- Home and community-based services.
- Home Help.
- Home Health.

MA will pay for other MA-covered services.

**Resource means all the client's and his spouse's assets and income.** It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. BEM 405 p 1.

**Transferring a resource** means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment.

Selling an asset for fair market value is not a divestment. Conversely, selling an asset for less than fair market value IS a divestment.

At pages 5 and 6 additional direction is found.

The first step in determining the period of time that transfers can be looked at for divestment is determining the **baseline date**; see Baseline Date in this item.

Once the baseline date is established, you determine the look-back period. The look back period is 60 months prior to the baseline date for all transfers made after February 8, 2006.

Entire Period

Transfers that occur **on** or **after** a client's baseline date must be considered for divestment. In addition, transfers that occurred within the 60 month look-back period must be considered for divestment.

Penalty  
Situation

A divestment determination is **not** required unless, sometime during the month being tested, the client was in a penalty situation. To be in a penalty situation, the client must be eligible for MA (other than QDWI) and be one of the following:

- In an LTC facility.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Help.
- Eligible for Home Health.

Baseline  
Date

A person's baseline date is the **first** date that the client was eligible for Medicaid and one of the following:

- In LTC.
- APPROVED FOR THE WAIVER; see BEM 106.
- Eligible for Home Health services.
- Eligible for Home Help services

BEM 401 (7/1/14) provides the policy governing trusts in the context of MA. "Medicaid Trust" is defined at pages 5-6. The parties have agreed that this is a Medicaid Trust, so this Decision will not focus on that issue. At page 11, the Department is instructed to:

"Count as the person's countable asset the value of the countable assets in the trust principal if there is any condition under which the principal could be paid to or on behalf of the person from an irrevocable trust. Real property (land) left to children in equal shares have no estate tax on the transfer of property,

"Count as the person's countable asset the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person. Individuals can keep income made off of property and the money goes to the individual not the trust. Property cannot be taken out of the trust."

Michigan has little case law that provides guidance for interpreting this policy. 42 USC 1382b defines "resources" and provides instructions for how resources are to be evaluated in determining eligibility for MA.

42 USC 1382b(e) instructs the Department to examine trusts to determine the individual's resources.

(e) Trusts

- (1) In determining the resources of an individual, paragraph (3) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.
- (2)
  - (A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual's spouse) are transferred to the trust other than by will.
  - (B) In the case of an irrevocable trust to which are transferred the assets of an individual (or of the

individual's spouse) and the assets of any other person, this subsection shall apply to the portion of the trust attributable to the assets of the individual (or of the individual's spouse).

- (C) This subsection shall apply to a trust without regard to –
- (i) The purposes for which the trust is established;
  - (ii) Whether the trustees have or exercise any discretion under the trust;
  - (iii) Any restrictions on when or whether distributions may be made from the trust; or
  - (iv) Any restrictions on the use of distributions from the trust.

(3)

- (A) In the case of a revocable trust established by an individual, the corpus of the trust shall be considered a resource available to the individual.
- (B) In the case of an irrevocable trust established by an individual, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual (or of the individual's spouse), the portion of the corpus from which payment to or for the benefit of the individual (or of the individual's spouse) could be made shall be considered a resource available to the individual.

Through the office of the Attorney General, the Department submitted a Hearing Summary. Attached to the Hearing Summary is an excerpt from POMS<sup>1</sup> SI 01120.201. In paragraph D of that POMS, the subject of irrevocable trusts is addressed.

## **2. Irrevocable trusts**

### **a. General rule for irrevocable trusts**

In determining whether an irrevocable trust established with the assets of an individual is a resource, we must consider how payments from the trust can be made. If payments from the trust could be made to or for the benefit of the individual or individual's spouse (SI 01120.201F.1. in this section), the portion of the trust from which payment could be made that is attributable to the individual is a resource. However, certain exceptions may apply (see SI 01120.203).

### **b. Circumstance under which payment can or cannot be made**

In determining whether payments can or cannot be made from a trust to or for the benefit of an individual (SI 01120.201F.1.), take into consideration any restrictions on payments. Restrictions may include use restrictions, exculpatory clauses, or limits on the trustee's discretion included in the trust. However, if a payment can be made to or for the benefit of the individual under **any**

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<sup>1</sup> POMS are from the Programs Operations Manual System of the Social Security Administration.

circumstance, no matter how unlikely or distant in the future, the general rule in SI 01120.201D.2.a. in this section applies (i.e., the portion of the trust that is attributable to the individual is a resource, provided no exception from SI 01120.203 applies).

### **c. Examples**

- An irrevocable trust provides that the trustee can disburse \$2,000 to, or for the benefit of, the individual out of a \$20,000 trust. Only \$2,000 is considered to be a resource under SI 01120.201D.2.a. in this section. The other \$18,000 is considered to be an amount which cannot, under any circumstances, be paid to the individual and may be subject to the transfer of resources rule in SI 01120.201E in this section and SI 01150.100.
- If a trust contains \$50,000 that the trustee can pay to the beneficiary only in the event that he or she needs a heart transplant or on his or her 100<sup>th</sup> birthday, the entire \$50,000 is considered to be a payment which could be made to the individual under some circumstance and is a resource.
- An individual establishes an irrevocable trust with \$10,000 of his assets. His parents contribute another \$10,000 to the trust. The trust only permits distributions to, or for the benefit of, the individual from the portion of the trust contributed by his parents. The trust is not subject to the rules of this section. The portion of the trust contributed by the individual is subject to evaluation under the transfer of resources rules in SI 01150.100 (see also SI 01120.201E in this section). The portion of the trust contributed by his parents is subject to evaluation under SI 01120.200.

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## **F. Policy for the benefit of or on behalf of or for the sole benefit of an individual**

### **1. Trust established for the benefit of or on behalf of an individual**

Consider a trust established **for the benefit** of an individual if payments of any sort from the corpus or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

Likewise, consider payments to be made **on behalf of, or to or for the benefit of** an individual, if payments of any sort from the corpus or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

For example, such payments could include purchase of food or shelter, or household goods and personal items that count as income. The payments could also include services for medical or personal attendant care that the individual may need which does not count as income.

**NOTE:** These payments are evaluated under regular income-counting rules. However, they do not have to meet the definition of income for SSI

purposes to be considered to be made **on behalf of**, or **to or for the benefit of** the individual.

If funds from a trust that is a resource are used to purchase durable items, e.g., a car or a house, **the individual (or the trust) must be shown as the owner of the item** in the percentage that the funds represent the value of the item. When there is a deed or titling document, the individual (or trust) must be listed as an owner. Failure to do so may constitute evidence of a transfer of resources.

## **2. Trust established for the sole benefit of an individual**

### **a. General rule regarding sole benefit of an individual**

Consider a trust established **for the sole benefit of** an individual if the trust benefits no one but that individual, whether at the time the trust is established or at any time for the remainder of the individual's life.

Except as provided in SI 01120.201F.2.b. in this section and SI 01120.201F.2.c. in this section, do not consider a trust that provides for the trust corpus or income to be paid to or for a beneficiary other than the SSI applicant/recipient to be established for the sole benefit of the individual.

### **b. Exceptions to the sole benefit rule for third party payments**

Consider the following disbursements or distributions to be for the sole benefit of the trust beneficiary:

- Payments to a third party that result in the receipt of goods or services by the trust beneficiary;
- Payment of third party travel expenses which are necessary in order for the trust beneficiary to obtain medical treatment; and
- Payment of third party travel expenses to visit a trust beneficiary who resides in an institution, nursing home, or other long-term care facility (e.g., group homes and assisted living facilities) or other supported living arrangement in which a non-family member or entity is being paid to provide or oversee the individual's living arrangement. The travel must be for the purpose of ensuring the safety and/or medical well-being of the individual.

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201!opendocument#d>

The Department interprets the second example in paragraph (c) "examples" as a definitive finding that, if there is any circumstance under which any of the trust corpus can be paid to the Claimant's husband, then the entire trust is countable as an asset in determining Claimant's eligibility. The argument is that, because the SBO contained [REDACTED] in assets, Claimant had excess assets that made her ineligible.

In Pohlmann ex rel Pohlmann v Nebraska Dept of Health and Human Services, 271 Neb 271; 710 NW2d 639 (2006), a similar factual scenario was at issue. In that case, Mr. Pohlmann executed a will which provided for the creation of two trusts at his death. A marital trust was to be established with some of the property he owned at his death. His wife, Ruth, was to receive all of the net income from the trust, and was entitled to disbursement of all or part of the principal on her written request, or if she were incapacitated, at the discretion of the trustee. The second trust, referred to as the Family Trust was to be funded and Ruth would receive “all of the accumulative income from the individual funds and such portion of the principal as [the trustee] may, from time to time, deem appropriate for her health, education, support or maintenance.”

Mr. Pohlmann died and his will was probated in 2000. In 2003, the couple’s son applied for MA on Ruth’s behalf. On June 30, 2003, DHHS denied her request because it believed excess assets were available to her under the trust established by her deceased husband’s will. That decision was appealed and a hearing officer affirmed the decision, “based upon her reading of the provisions concerning the marital trust and the application of 42 USC 1396p(d)(3)(B)(i) (2000), which deems that resources of an irrevocable trust are available to an applicant if there are ‘any circumstances’ under which payment could be made for the benefit of the applicant.” Pohlmann at 274.

“Applying the ‘any circumstances’ test of 1396p(d)(3)(B)(i) and Neb. Admin Code ch. 2, Sec. 009.07A5b(2) (2001) to the language of the Family Trust, the district court found that Ruth ‘could receive payments from the Irrevocable Family Trust to pay for her medical expenses.’” Pohlmann at 274-275.

On appeal, the Supreme Court of Nebraska identified the issue as, “whether the corpus of an irrevocable, discretionary testamentary trust is a resource available to the beneficiary spouse of the grantor for purposes of determining the spouse’s eligibility for Medicaid benefits. Medicaid is a cooperative federal program supervised by the US Department of Health and Human Services through the Health Care Financing Administration. See, 42 USC 1396 et seq (2000).” Pohlmann at 275. (Citation omitted.)

“Under federal law, a state participating in the Medicaid program must establish resource standards for the determination of eligibility, 1396a(a)(17)(B). These standards must take into account ‘only such income and resources as are, as determined in accordance with standards prescribed by the Secretary [of the US Department of Health and Human Services], available to the applicant or recipient.’ 1396a(a)(17)(B).” Pohlmann at 276. (Citations omitted.)

Pohlmann continues at 277, stating:

“With respect to irrevocable trusts, the federal statute further provides that if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual. 1396p(d)(3)(B)(i).



“In this case, DHHS and the district court applied the ‘any circumstances’ test of 1396p(d)(3)(B)(i) and the corresponding provision in 469 Neb Admin Code, ch 2, 009.08A5b(2), and concluded that because the trustee in the exercise of his discretion *could* make payments from the Family Trust to Ruth, the corpus was an available resource which disqualified her from receiving Medicaid benefits. This reasoning mirrors that of the Nebraska Court of Appeals in Borch v Nebraska Dept of Health and Human Servs., 11 Neb App 713, 718; 659 NW2d 848, 853 (2003), in which the Court of Appeals wrote that under the plain language of 1396p(d), if a person establishes an irrevocable trust with his or her assets and the individual is able, under *any circumstances*, to benefit from the corpus of the trust or the income derived from the trust, the individual is considered to have formed a trust which is counted in the determination of eligibility.”

Continuing at page 278, the Pohlmann opinion notes: “for Medicaid eligibility purposes, the corpus of a self-settled trust is an available resource under 13996p(d)(3)(B)(i) if the ‘any circumstances’ test is met. If the test is not met, the corpus is considered an asset disposed of by the individual for purposes of 1396p(c). See 1396p(d)(3)(B)(ii).” “Because the trust at issue here was not self-settled, but, rather, was testamentary, it was not within the purview of 1396p(d)(3)(B)(i) and 469 Neb Admin Code, ch 2, Sec. 009.07A5b(2). DHHS and the district court thus erred in applying the ‘any circumstances’ test to determine the availability of the trust corpus for purposes of Ruth’s Medicaid eligibility.”

“We acknowledge the argument made by DHHS that the statutory exemption of testamentary trusts from § 1396p seems inconsistent with the underlying purpose of Medicaid, which is to provide medical assistance to those who have no other financial means. However, we must also agree with the statement by the Supreme Court of Connecticut in Skindzier<sup>2</sup> that ‘we have no authority to impose a different rule simply because, in our opinion, it would better implement the legislative policy of minimizing the fiscal risk to [Medicaid].’ *Id.* at 661, 784 A.2d at 335. Instead, like the Connecticut court, we are “precluded from substituting [our] own ideas of what might be a wise provision in place of a clear expression of legislative will.” See *id.* at 661, 784 A.2d at 336.” Pohlmann at 278-279.

As stated in Pohlmann at 279, a determination that the “any circumstances” test was incorrectly used does not settle the issue of whether Family Trust assets were available resources for determining her eligibility for Medicaid.

“Nebraska regulations provide that ‘[t]estamentary trusts may be excluded as resources, depending on the terms of the trust.’ 469 Neb. Admin. Code, ch. 2, § 009.07A5g (2001). Under the Nebraska Uniform Trust Code, “[t]erms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as

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<sup>2</sup> Skindzier v Com’r of Social Services, 258 Conn 642; 784 A2d 323 (2001).

may be established by other evidence that would be admissible in a judicial proceeding.’ Neb. Rev. Stat. § 30-3803(19) (Supp.2005). See, also, Neb. Rev. Stat. § 30-38,110 (Cum. Supp. 2004). In analyzing the terms of a testamentary trust to determine if the corpus is ‘available’ to a beneficiary for purposes of Medicaid eligibility, courts have looked to whether the trust is a support trust or a discretionary trust. See, Miller v. SRS, *supra*; Eckes v. Richland Cty. Soc. Ser., 621 N.W.2d 851 (N.D.2001). We find the following formulation by the Supreme Court of North Dakota helpful where, as here, the beneficiary is not a co-trustee: The settlor’s intent determines whether a trust is classified as a support or a discretionary trust, which in turn determines what portion of the trust is available to an applicant for the purpose of qualifying for Medicaid benefits.... A support trust essentially provides the trustee ‘shall pay or apply only so much of the income and principal or either as is necessary for the education or support of a beneficiary.’ . . . A support trust allows a beneficiary to compel distributions of income, principal, or both, for expenses necessary for the beneficiary’s support, and an agency may consider the support trust as an available asset when evaluating eligibility for assistance....

“Conversely, a discretionary trust grants the trustee ‘uncontrolled discretion over payment to the beneficiary’ and may reference the ‘general welfare’ of the beneficiary.... Because the beneficiary of a discretionary trust does not have the ability to compel distributions from the trust, only those distributions of income, principal, or both, actually made by the trustee may be considered by the agency as available assets when evaluating eligibility for assistance. (Citations omitted.) Eckes v. Richland Cty. Soc. Serv., 621 N.W.2d at 855-56. See, also, Restatement (Third) of Trusts § 60 (2003).

“The key provision of the Family Trust stated that the trustee was to pay Ruth “all of the accumulative income from the individual funds *and such portion of the principal as it may, from time to time, deem appropriate for her health, education, support or maintenance.*” (Emphasis supplied.) Although not in the context of a Medicaid eligibility determination, we have held that similar discretionary powers granted to a trustee do not create a right of the beneficiary to compel payments from the trust. See, Doksansky v. Norwest Bank Neb., 260 Neb. 100, 615 N.W.2d 104 (2000); Smith v. Smith, 246 Neb. 193, 517 N.W.2d 394 (1994). In this case, DHHS concedes that the Family Trust is discretionary with respect to distributions of corpus, and we likewise conclude. Because Ruth cannot compel a distribution from the Family Trust corpus, it is not an available asset for purposes of determining her eligibility for Medicaid benefits.” Pohlmann at 279-281.

Medicaid statutes have been an on-going challenge for state courts and administrative agencies. In Estate of Gonwa ex rel Gonwa v Wisconsin Dept of Health and Family Services, 265 Wis2d 913; 668 NW2d 122 (2003), the Court of Appeals of Wisconsin

commented on the ever-changing landscape of Medicaid eligibility requirements. The opinion notes, at pages 128-129:

“¶ 19 Medical assistance is a joint federal and state program aimed at ensuring medical care for those who cannot pay for their own care. See *Tannler v. [265 Wis.2d 926] DHSS*, 211 Wis.2d 179, 190, 564 N.W.2d 735 (1997). To be eligible for MA in Wisconsin, an applicant must meet the financial requirements set forth in WIS. STAT. ch. 49. Pursuant to WIS. STAT. § 49.453, an applicant can become ineligible for certain MA benefits if he or she transfers assets in a manner prohibited by statute. These transfers are prohibited in order to prevent those who can afford to pay for their own medical needs from receiving medical assistance. See *Tannler*, 211 Wis.2d at 190, 564 N.W.2d 735.

“¶ 20 In an effort to prevent circumvention of Medicaid requirements, the Medicaid statutes are constantly evolving and have been revised repeatedly, causing consternation to providers, applicants, lawyers and judges. The following excerpt captures this sentiment:

‘There can be no doubt but that the statutes and provisions in question, involving the financing of Medicare and Medicaid, are among the most completely impenetrable texts within human experience. Indeed, one approaches them at the level of specificity herein demanded with dread, for not only are they dense reading of the most tortuous kind, but Congress also revisits the area frequently, generously cutting and pruning in the process and making any solid grasp of the matters addressed merely a passing phase.’ *Rehabilitation Ass'n of Virginia v. Kozlowski*, 42 F.3d 1444 (4th Cir. 1994).’

“*Johnson v. Guhl*, 91 F.Supp.2d 754, 758 (D.N.J.2000). Wisconsin Supreme Court Justice Shirley S. Abrahamson echoed this theme in her concurrence in *Tannler*, 211 Wis.2d at 191, 564 N.W.2d 735 (footnote omitted):

‘Anyone who works with medical assistance statutes begins by appreciating that the federal and state statutes are extremely complex and may fairly be described as incomprehensible. The statutes are characterized by ambivalence and ambiguity, by a confusing mix of means-tested programs and entitlements, and by uneasy compromises among different and often conflicting policies.’”

In the instant case, a sole benefit trust (similar to trusts often referred to in the Medicaid planning profession as an “SBO Trust”) was established to benefit Claimant’s spouse. That trust mandates distributions to the spouse “in an actuarially sound basis.” Trust, Section 2.2. (Exhibit 1 Page 4.) The Department has adopted the position that any SBO trust, because it must be distributed to the beneficiary, is an available asset in its entirety. They agree that it is not a divestment, and therefore no divestment penalty period would be imposed. But, because the Department considers the trust assets to

be available, Claimant would be required to deplete the trust assets before she would be eligible for MA. That is an erroneous interpretation.

The trust requires distribution to Claimant's spouse on an actuarially sound basis. Thus, only a portion of the trust is distributed each year, and that portion is distributed to the spouse, not to the Claimant. The intent is to provide the Claimant's spouse with a source of income each year, with principal remaining in the trust to be depleted over the expected lifetime of the spouse. The Claimant is not a beneficiary of the trust, and therefore she is unable to compel any distributions. Beyond that, she is not an intended beneficiary of the trust. There is no "condition under which the principal and/or income could be paid to or on behalf of the person from the trust."

Looking back at 42 USC 1382b(e)(3)(B), if an irrevocable trust is established by an individual (referring to an individual who applies for MA), if there are any circumstances under which payment could be made from the trust to or for the benefit of the individual (or her spouse), the portion of the corpus from which the payment is or could be made is a resource available to the individual. If Claimant had established an irrevocable trust for her husband's benefit which was distributed on an actuarially sound basis, the amount distributed would be "available" at the time of distribution. In this case, Claimant did not establish the trust. Her spouse established it. Even POMS SI 01120.201, paragraph F, acknowledges that the trust has to benefit the Claimant for it to be countable: "If payments from the trust could be made to or for the benefit of the individual or the individual's spouse, the portion of the trust from which payment could be made that is attributable to the individual is a resource." (Emphasis added.) The phrase "to or for the benefit of the individual or the individual's spouse" is read as a requirement that the trust must contain a provision that allows distributions "to or for the benefit of the individual or the individual's spouse"; it is not read as making the assets countable just because they can be made to or for the benefit of the spouse. That would be inconsistent with the statement that the trust is "established for the benefit of an individual if payments of any sort from the corpus or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment." Also, "the portion" obviously means something less than the whole. Only a portion is distributed each year, not the entire corpus, so the entire corpus would not be countable. Consequently, the assets are not considered available to the Claimant, even when they are distributed.

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 concluded that the assets in the irrevocable trust were available to the Claimant.

### **DECISION AND ORDER**

Accordingly, the Department's 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. The Department shall initiate the recertification and reprocessing of Claimant's application for MA benefits dated May 30, 2014, disregarding the assets in the Irrevocable Trust for the Benefit of [REDACTED].



**Darryl Johnson**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **10/29/2014**

Date Mailed: **10/29/2014**

DJ/jaf

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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

cc:

