

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006674
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: October 07, 2014
County: MACOMB-DISTRICT 12

ADMINISTRATIVE LAW JUDGE: Gary 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 October 7, 2014, from Lansing, Michigan. Participants on behalf of Claimant included his daughter [REDACTED] and her Attorney [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [REDACTED].

ISSUE

Did the Department properly deny Claimant's Medical Assistance applications?

FINDINGS OF FACT

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

1. In January 2014, Claimant entered a nursing home. Claimant was still legally married but no longer resided with his spouse.
2. Shortly after Claimant entered the nursing home, his daughter, [REDACTED] submitted a Medical Assistance application on his behalf. Claimant's legal spouse is not [REDACTED]'s biological mother. [REDACTED] did not know the location of Claimant's legal spouse.
3. On March 24, 2014, the Department case worker provided [REDACTED] with an address for Claimant's legal spouse.
4. On May 9, 2014, Claimant's daughter, [REDACTED] submitted another Medical Assistance application on behalf of her father. [REDACTED] included a letter to the Department case worker indicating a registered letter had been sent to Claimant's legal spouse at an address the Department had obtained and provided to her ([REDACTED]). In the letter, [REDACTED] stated that no response was received from anyone at the address provided by the Department.

5. On May 15, 2014, Claimant was sent a Medical Determination Verification Checklist (DHS-3503-MRT). The Department stated all bank accounts from Claimant's legal spouse were required.
6. On June 9, 2014, Claimant was sent a Health Care Coverage Determination Notice (DHS-1606).
7. On July 3, 2014, a hearing request, written by Attorney [REDACTED] was submitted. The hearing request consisted of a letter and a copy of the June 9, 2014, Health Care Coverage Determination Notice (DHS-1606). The extent of information in the letter was the statement "Please consider this Mr. [REDACTED] Appeal."
8. On October 6, 2014, [REDACTED] signed a Substitution of Attorney, approving [REDACTED] to substitute as counsel of record for [REDACTED]
9. On October 7, 2014, the date of this hearing, Attorney [REDACTED] submitted a brief to the Department.
10. On October 10, 2014, Attorney [REDACTED] submitted a copy of the brief to this Administrative Law Judge identifying it as a "written argument on issues of law, policy and issues of fact."

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.

Bridges Eligibility Manual (BEM) 402 Special MA Asset Rules (2014) provides guidance regarding initial asset assessments for married Medical Assistance application in a nursing home. In the present case, the Department has proceeded under the assumption that Claimant's estranged spouse fits the definition of a "community spouse":

DEFINITIONS

MA Only

Community spouse - Client's spouse when the spouse:

Has **not** been, and is **not** expected to be, in a hospital and/or LTC facility for 30 or more consecutive days or approved for a waiver or Freedom to Work; or

For waiver clients, the spouse is **not** also approved for the waiver or PACE.

For PACE clients, the spouse is **not** also approved for the waiver or PACE.

The Department denied Claimant's May 9, 2014, Medical Assistance application based on their determination that Claimant's estranged spouse had refused to provide verification of her assets.

BEM 402, at page 11, under Information Unavailable states:

SSI-Related MA Only

If the community spouse's whereabouts are unknown (a couple separated prior to the client entering an LTC/hospital setting and the client does **not** know where the spouse is living or how to contact the spouse), the client's countable assets are compared to the appropriate asset limit in BEM 400 to determine eligibility.

Refusal of the community spouse to provide necessary information or verification about his assets results in ineligibility for the client.

At this point in my analysis it is both prudent and necessary to provide some edification about Administrative Law for all present and future readers of this Decision and Order. An Administrative Law Judge is part of the Executive Branch of government, not the Judicial Branch. The scope of authority delegated to an Administrative Law Judge conducting hearings on Department of Human Services' eligibility issues is contained in 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).

In the brief submitted, Attorney A. Woods argues that the facts in this case do not constitute a community spousal refusal. That argument relies on facts asserted to occur during the processing of the first application in January or February 2014. The May 9, 2014, Medical Assistance application was denied on June 9, 2014. The hearing request that created jurisdiction for this hearing was submitted by Attorney J. Miller on July 3, 2014.

Bridges Administration Manual (BAM) 600 provides that a hearing request must be submitted within 90 calendar days of the date of notice, of a Departmental action. There is no evidence in the record showing the date of notice, of the Department's eligibility determination on the first application submitted in January or February of 2014. The July 3, 2014, hearing request would cover any Department eligibility determination made on, or after April 5, 2014.

The Department bears an initial burden of going forward with evidence. In Administrative Law Hearings on Department of Human Services' eligibility determinations, neither Claimant's nor their authorized hearing representatives are expected to have extensive knowledge of Department policies. However, the Department is expected to have extensive knowledge of their own policies.

In this case the Department asserts that Claimant's legal spouse is a "community spouse" in accordance with BEM 402 (cited above). That classification is a pivotal issue in the June 9, 2014, Medical Assistance eligibility determination. It also appears to be a pivotal issue in the Department's denial of the first application submitted in January or February 2014. However, the Department did not present any evidence about Claimant's legal spouse which shows that she in fact meets the BEM 402 criteria of a community spouse.

Neither the Department nor Claimant presented any evidence which shows the date of notice of the denial of the first application. This failing, on the part of both parties, could have been remedied by me. I state in all candors that this is neither the first or last time I will fall short of perfection in the immediate facilitation of the evidentiary record of a convoluted situation which I had no prior knowledge of. None the less, the hearing has ended and there is insufficient information in the record to determine if denial of the first application is within the jurisdiction of this decision.

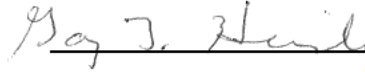
Based on the above Findings of Fact and Conclusions of Law, I find that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy regarding either of Claimant's Medical Assistance applications.

DECISION AND ORDER

Accordingly, the Department's decision **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. Reinstate all of Claimant's Medical Assistance applications submitted between January and June 2014 and process them in accordance with Department policy.
2. Issue a current determination for Claimant's Medical Assistance eligibility.



Gary Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/10/2014**

Date Mailed: **11/10/2014**

GFH/hj

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:



