

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

IN THE MATTER OF:



Reg. No.: 14-000792
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: June 5, 2014
County: OAKLAND-DISTRICT 4 (NORTH SAGINAW)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 June 5, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative, [REDACTED], and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistant Attorney General [REDACTED], [REDACTED] and [REDACTED].

ISSUE

Due to excess assets, did the Department properly deny Claimant's application for Medical Assistance (MA)?

FINDINGS OF FACT

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

1. Claimant's spouse established an irrevocable trust solely for the benefit of himself on [REDACTED]. (Exhibit 3)
2. Claimant's spouse's trust was funded in [REDACTED]. (Undisputed testimony).
3. Claimant applied for MA benefits on [REDACTED]. (Exhibit 1)
4. Claimant's total asset amount for the month of [REDACTED] was \$29,151.21, including \$8,216.11 in a trust for Claimant's spouse. (Exhibit 9)

5. The protected spousal amount for Claimant's MA group was \$23,448.00. (Exhibit 2)
6. On [REDACTED], the Department denied Claimant's MA application due to excess assets. (Exhibit 10)
7. On [REDACTED], Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are found 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.

In the present case, on [REDACTED], Claimant's spouse established an irrevocable trust solely for the benefit of himself, hereinafter referred to as "Trust." (Exhibit 3) The parties did not dispute that the Trust was a Medicaid trust, as described in BEM 401 (10/2013), pp.5, 6, in that the person whose resources were transferred to the Trust is someone whose assets or income must be counted to determine MA eligibility, the Trust was established by Claimant's spouse, the Trust was established on or after [REDACTED], the Trust was not established by a will, and the Trust was not described in Exception A or Exception B within BEM 401.

Claimant's witness testified that the Trust was funded in [REDACTED], sometime after [REDACTED]. The Department witness testified that she did not know whether the Trust was funded prior to [REDACTED], but she did have evidence that the Trust was funded sometime in [REDACTED]. It is therefore concluded that the Trust was funded in [REDACTED], but after [REDACTED].

Claimant submitted an application for MA on [REDACTED]. The Department submitted undisputed evidence that the Trust had an asset value of \$8,216.11 at the time of the application. (Exhibits 5, 6, 7, 9) The Department also submitted undisputed evidence that Claimant and her spouse had liquid assets of \$19,859.68 and life insurance valued at \$1,075.42. (Exhibit 9) The parties stipulated at the hearing that the protected spousal amount was \$23,448.00. (Also see Exhibit 2)

The policy for Countable Assets from Medicaid Trusts is found at BEM 401 (10/2013), p. 10:

How much of the principal of a trust is a countable asset depends on:

The terms of the trust, and

Whether any of the principal consists of countable assets or countable income.

Countable Assets

The following are countable assets.

Assets that are countable using SSI-related MA policy in BEM 400. Do not consider an asset unavailable because it is owned by the trust rather than the person.

...

The Trust at issue herein states in part,

Section 1.6 Fiscal Year

(a) First Fiscal Year

The trust's first fiscal year will begin with the date of the execution of this trust and will end on [REDACTED].

(b) Subsequent Fiscal Years

The trust's second and subsequent fiscal years will begin on January 1st of each year and end on December 31st of that year.

Section 2.1 Distribution of Income and Principal

During [REDACTED] life and using the attached life expectancy table (attached as Exhibit A), Trustee shall annually distribute such portion of the trust property solely to (or otherwise for the benefit of) [REDACTED] so as to result in the use and exhaustion of the entire principal of the trust property during [REDACTED] expected lifetime. To the extent possible, these mandatory distributions should be made in such a manner so as to provide [REDACTED] with

those benefits and services (and only those benefits and services) that in Trustee's judgment are not otherwise available to [REDACTED] from other sources, such as governmental, charitable or other programs. Trustee may make distributions at such time and in such amounts during each year as Trustee, in its sole and absolute discretion, deems best. Trustee shall use its best efforts to administer this trust so as not to disqualify [REDACTED] from any current or future benefits to which [REDACTED] may be entitled.

(a) Initial Distribution

No distribution may be made to (or for the benefit of) [REDACTED] prior to [REDACTED].

(b) Valuation During First Fiscal Year

For the purposes of determining the mandatory distribution amount for the first fiscal year, the property transferred to the trust will be valued as of the date of transfer.

(c) Valuation During Subsequent Fiscal Years

For purposes of computing the mandatory distribution amount for the trust's second and subsequent fiscal years, the trust shall be valued on the 1st day of January of that fiscal year.

Section 2.2 Additional Discretionary Distributions

Subject to the above distribution parameters during the first fiscal year, Trustee, in its sole and absolute discretion, may distribute to (or otherwise for the benefit of) [REDACTED] all (or such lesser portion) of the remaining net income (if any) and all (or such lesser portion) the remaining principal (if any) of the trust as Trustee determines to be in [REDACTED] best interest.

Claimant, citing Section 1.6 of the Trust with regard to fiscal year, argues that since the Trust was not funded until [REDACTED], no annual mandatory distribution could have been made in 2013. In addition, the Trust valuation for purposes of computing the

mandatory distribution amount for the fiscal year 2014 was [REDACTED] (Section 2.1 (c)), at which time the Trust was not funded. Therefore, Claimant would argue, the Trust assets were not countable at the time of application of [REDACTED].

However, Section 2.2 (Additional Discretionary Distributions of the Trust) states in part, "Trustee, in its sole and absolute discretion, may distribute to (or otherwise for the benefit of) [REDACTED] . . . all (or such lesser portion) the remaining principal (if any) of the trust as Trustee determines to be in [REDACTED] best interest . . ." Therefore, the Trustee could have distributed funds to Claimant's spouse as soon as the Trust was funded in [REDACTED].

BEM 401 (10/2013), p. 11, instructs, with regard to irrevocable trusts, to count as a 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. Since all of the remaining principal of the Trust could have been distributed to Claimant's spouse in [REDACTED], the Trust's assets valued at \$8,216.11 should be included in the countable assets for Claimant. See BEM 211 (1/2014), p. 4, instructing that the adult (Claimant herein) and spouse are considered an asset group for establishing initial eligibility.

Also see BEM 402 (7/2013), p. 4:

Initial Eligibility Formula SSI-Related MA

The formula for asset eligibility is:

The value of the couple's (his, her, their) countable assets for the month being tested.

MINUS the protected spousal amount (see below).

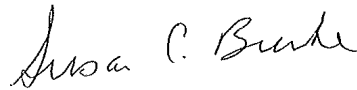
EQUALS the client's countable assets. Countable assets must not exceed the limit for one person in BEM 400 for the category(ies) being tested.

It is noted that Claimant did not dispute the type and value of assets making up the Trust principal; Claimant argued only that the Trust principal as a whole was not available to be counted. Since it is found that the Trust principal was available to Claimant's spouse, and therefore available to be counted for Claimant at the time of Claimant's application, the Department correctly applied the formula in BEM 402 above, and correctly found that Claimant's total countable resources amount exceeded the asset limit. (Exhibit 9)

The Administrative Law Judge, based upon 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 MA application.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.



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

Date Signed: **6/24/2014**

Date Mailed: **6/24/2014**

SCB / hw

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:

