

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

IN THE MATTER OF:



Reg. No.: 14-002232
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: August 13, 2014
County: Jackson

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 August 13, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant, and [REDACTED] from [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Eligibility Specialist [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 applied for retro-active MA benefits.
2. Due to excess assets, on February 28, 2014, the Department denied Claimant's application and sent Claimant's Authorized Representative (AR) its decision.
3. On May 5, 2014, 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.

Claimant initially applied for MA and her application was denied due to excess assets. Per BEM 400 (2/1/14) p. 7, the MA limit is \$2,000 for an individual and \$3,000 for a couple. Claimant had owned several vehicles and boats which the Secretary of State identified. The Department sent Claimant a note (Exhibit A, page 4) asking her to verify whether she and her husband owned the assets, and if they had been disposed of, among other information. Claimant and her husband had other assets, but the focus of the contention between Claimant and the Department centered on the value of the vehicles. As directed in BEM 400 at 36, the Department properly excluded "one motorized vehicle owned by the asset group. If the asset group owns multiple motorized vehicles:

"Use the Employment Asset Exclusions first, then
"From any remaining motorized vehicles, exclude the one with the highest equity value."

The Department concluded that Claimant had vehicles totaling [REDACTED] in value beyond the vehicle with the highest equity value. (Exhibit 1 Pages 38-40.) On February 28, 2014, the Department denied Claimant's application (Exhibit 1 Pages 43-44) on the basis that she had excess assets. On February 14, 2014, Claimant had provided a written statement (Exhibit A Pages 56-57) identifying the vehicles that they still owned, and what had happened to the vehicles they no longer owned. At the time of the application, Claimant owned the following vehicles, with the presumed values (less outstanding debt):

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

As an aside, Claimant testified that they are leasing the [REDACTED]; but when the lease is finished, they can buy the vehicle by paying just the sales tax. If that is an

accurate representation of the arrangement with the financing company, that is not a true lease. However, because the vehicle has negative equity, it does not affect Claimant's eligibility. If it were a leased vehicle it would not be owned, so it likewise would not be an asset.

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

As stated in BEM 400 (7/1/14) p 6, "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."

If Claimant met the asset limit for any day in the month of October, and if she was not in one of the penalty situations, then it seems she was eligible. "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.

The Department did not satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's MA application.

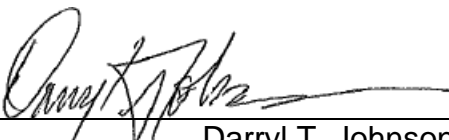
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's application for MA.

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. Redetermine Claimant's retroactive MA benefit eligibility for the months of October, November, and December 2013, based upon the January 2, 2014, application. Once the Department has made a determination of eligibility or lack thereof for MA benefits, the Department shall notify Claimant in writing of the determination.



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

Date Signed: **8/14/2014**

Date Mailed: **8/14/2014**

DTJ / 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:

