

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007476
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: September 24, 2014
County: GENESEE-DISTRICT 6 (CLIO RD)

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, September 24, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's attorney, [REDACTED], from [REDACTED]. The Claimant is deceased. Participants on behalf of the Department of Human Services (Department) included [REDACTED], APW, and Assistant Attorney General, [REDACTED].

ISSUE

Due to excess assets, did the Department properly deny the 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. The Claimant applied for MA benefits.
2. Due to excess assets, on May 22, 2014, the Department denied Claimant's application.
3. On May 22, 2014, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.
4. On July 3, 2014, 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.

Additionally, the Claimant applied for MA on May 20, 2014 as a Patient in a nursing home facility. Department Exhibit 3-9. The Department counted assets of [REDACTED] commission from the [REDACTED] in the Claimant's savings account, and [REDACTED] in the Claimant's checking account. Department Exhibit 19-20 and 39. The Department Caseworker ran a budget based on the Claimant's countable assets of [REDACTED] of liquid and [REDACTED] of burial for a total countable resources amount of [REDACTED], which exceeded the MA asset limit of [REDACTED]. Department Exhibit 49. On May 22, 2014, the Department Caseworker sent the Claimant a denial notice that her application was denied due to excess assets. Department Exhibit 51-55. BAM 105, 110, 115, 130, 220, and 600. BEM 400.

During the hearing, the Department Caseworker stated that the [REDACTED] commission for the Claimant's daughter funeral expense is a required countable asset based on policy. The Claimant's attorney disagreed saying that it was part of the total contract and should be excluded, which would make the Claimant eligible for MA for the month of May 2014.

BEM 400, ASSETS

SSI-Related MA Burial Space Exclusion SSI-Related MA Only, page 48-49

Exclude **one** burial space **held for** (see below) each of the following:

- Each qualified fiscal group member.
- Whether by blood, adoption or marriage, the member's:
 - Parents.
 - Minor and adult children.
 - Siblings.

- The spouse of each person listed above.

For a member's relatives only by marriage, apply the exclusion only if the marriage has **not** ended by death or divorce.

Burial space items in a prepaid funeral contract must be identified and valued separately from non-burial space items to be excluded.

If the contract shows the purchase of a specified burial space at a specified price, determine whether such space is **held for** the client or member of the client's immediate family. If the space is held for the individual, determine if the contract is irrevocable or revocable. If irrevocable, it is not a resource. If the contract is revocable, it is an excludable resource. The burial space must continue to meet the **held for** criteria to be excluded.

Held For. A burial space is held for an individual when someone currently has:

- Title to and/or possesses a burial space intended for the individual's use (example: has title to a burial plot, owns a burial urn stored in the basement for his own use).
- A contract with a funeral service company for specified burial spaces for the individual's burial (that is, an agreement that represents the individual's current right to the use of the items at the amount shown).

Until the purchase price is paid in full, a burial space is **not held for** an individual under an installment sales contract or similar device unless all of the following are true:

- The individual does **not** currently own the space.
- The individual does **not** currently have the right to use the space.
- The seller is **not** currently obligated to provide the space.

Until all payments are made on the contract, the amounts paid might be considered burial funds; see **Burial Fund Exclusion** in this item.

**Revocable Prepaid Funeral Contract Exclusions and Value
SSI-Related MA Only, page 49**

Funds in a revocable prepaid funeral contract might be excludable using the **Burial Fund Exclusion** and/or the **SSI-Related MA Burial Space Exclusion** above.

The countable amount of the contract is the amount remaining on deposit after deducting those exclusions and any commissions or fees that would be charged upon withdrawal. There is no burial funds exclusion.

This Administrative Law Judge finds that the Claimant could pay for her daughter's funeral expenses since she is a qualified group member. However, the [REDACTED] contested amount was a commission paid to the funeral home and had nothing to do with the burial of the Claimant's daughter as is required by policy. The contract covered a casket in the amount of [REDACTED], an outer burial container of [REDACTED], plus [REDACTED] in Michigan sales tax for a total contract amount of [REDACTED]. The Department properly allowed the funeral expenses of the [REDACTED] previously cited, but correctly excluded and counted the commission of [REDACTED] as an asset. Policy clearly states that the countable amount of the contract is the amount remaining after any commissions or fees. As a result, the countable allowable amount of the contract is [REDACTED], not counting and allowing the [REDACTED] commission. The Claimant was excess assets for the month of May 2014.

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 properly determined that the Claimant had excess assets for MA for the month of May 2014.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/2/2014**

Date Mailed: **12/2/2014**

CGF\crl

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 48909-8139

cc:



