

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-008687  
Issue No.: 2001  
Case No.: [REDACTED]  
Hearing Date: November 6, 2014  
County: Macomb (12)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 November 6, 2014, from Detroit, Michigan. James Schuester testified and appeared as Claimant's authorized hearing representative and legal counsel. [REDACTED], paralegal, [REDACTED], Claimant's spouse, and [REDACTED], trustee, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Hearings Facilitator.

**ISSUE**

The issue is whether DHS properly determined Claimant to be ineligible for Medical Assistance (MA) benefits due to excess assets.

**FINDINGS OF FACT**

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

1. Claimant was an ongoing nursing home resident.
2. Claimant was a married person.
3. On [REDACTED], Claimant and his spouse created a trust solely for the benefit of (SBO) Claimant's spouse.
4. On [REDACTED], Claimant applied for MA benefits, including retroactive MA benefits from 2/2014.

5. On [REDACTED], DHS denied Claimant's MA application, in part, based on counting SBO trust corpus as assets of Claimant.
6. On [REDACTED], Claimant requested a hearing to dispute the denial of MA benefits.

### **CONCLUSIONS OF LAW**

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis, a procedural issue must be addressed. DHS requested an adjournment based on failure to procure legal representation. DHS presented testimony that representation was requested several months before the hearing. The DHS request for adjournment was denied due to a failure to establish any good cause for their failure to procure representation for the hearing.

Claimant's AHR requested a hearing to dispute a Claimant denial of MA benefits. It was not disputed that DHS denied Claimant's eligibility based on excess assets.

It was not disputed that Claimant, as an aged and/or disabled individual, was potentially eligible only for SSI-related MA benefits. Though Claimant was a married individual, he resided in a nursing home. It can be inferred that DHS determined Claimant to be a one-member MA fiscal group based on DHS testimony that Claimant's asset limit was \$2,000. The SSI-related MA category asset limit is \$2,000 for a benefit group of one. BEM 400 (4/2012), p. 5.

During the hearing, DHS provided testimony to support the MA denial. DHS cited MA budgets from 2/2014 and 3/2014 which factored the following assets:

	<u>2/2014</u>	<u>3/2014</u>
Trust	\$163,047.79	\$137,208.20
Liquid assets	+ \$114,785.68	\$115,584.07
Vehicles	+ \$1,126.00	\$1,126.00
Total assets	= \$278,959.47	\$254,189.17
<u>Spousal protected resource-</u>	<u>\$117,240.00</u>	<u>\$117,240.00</u>
Countable assets	= \$161,719.47	\$136,949.17

Based on the MA asset budget, Claimant's asset eligibility appears to hinge on whether DHS properly counted trust corpus as an asset in Claimant's MA eligibility. The analysis will commence with an examination of this issue.

It was not disputed that trust corpus budgeted by DHS was part of a "solely for the benefit of" (SBO) trust for Claimant's spouse. DHS presented two bank statements. Both statements were addressed to Claimant's spouse. Each statement referenced the SBO trust creation date; thus, it was reasonably certain that the statements verified the SBO trust corpus.

A bank statement (Exhibit 15) for the period of [REDACTED] was presented. A balance of \$138,032.20 was noted for the date of [REDACTED]

A bank statement (Exhibits 16-17) for the period of [REDACTED] was presented. A beginning balance of \$163,047.79 was noted. A balance of \$137,208.20 on the date of [REDACTED] was noted.

Claimant's attorney contended that DHS wrongly counted SBO trust corpus as a Claimant asset. Claimant's attorney referred to DHS' own memorandum as support for his contention.

A DHS memo (Exhibits 8-11) dated [REDACTED] was presented. The memo was drafted by the Office of Legal Services / Trust and Annuities Unit. The memo stated that the SBO trust principal is a countable asset "if there is any condition under which the principal and/or income could be paid to or on behalf of the person from the trust". The memo excerpt mirrors irrevocable trust policy from BEM 401 (7/2014), p. 11.

The memo analysis went on to state the trust's requirement of a payment after [REDACTED] was a condition whereby trust principal would be paid to Claimant's spouse. The memo concluded that all countable assets and income within the trust were countable assets for Claimant's spouse. Based on DHS policy, the trust corpus is properly counted as an asset for Claimant's spouse.

It is Claimant's MA asset-eligibility that is disputed, not the eligibility of Claimant's spouse. DHS presented no argument that a SBO trust condition existed whereby Claimant could receive trust principal. This consideration supports finding that the SBO trust corpus was not a countable Claimant asset.

The DHS memo makes no mention of counting the SBO trust as a Claimant asset. This omission is fairly persuasive evidence that DHS should not have counted SBO trust corpus as a Claimant asset.

The DHS memo stated that documentation must be obtained to determine the amount of payments made to Claimant's spouse so that it may be counted as Claimant's

spouse's unearned income. One purpose for obtaining such documentation would be to determine if trust payments to Claimant's spouse were actuarially sound.

Consideration was given to whether DHS considered Claimant's spouse's payments to be actuarially unsound. It is possible that if trust payments to Claimant's spouse were actuarially unsound, then trust corpus could be considered to be a divestment of assets and/or a Claimant asset.

Claimant's spouse was 86 years old as of 2/2014. A female life expectancy table (see BEM 405 (5/2013), p. 15) states that Claimant's life expectancy is 6.31 years. Claimant's spouse received a \$25,839.58 payment (see Exhibit 16) sometime on or between [REDACTED]. The payment is an actuarially sound annual payment, given trust corpus balance (\$163,047.79) and Claimant's life expectancy.

Based on the presented evidence, it is found that DHS improperly counted SBO trust corpus as a Claimant's asset. Accordingly, the denial of Claimant's MA benefit application is reversed.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS perform the following actions:

- (1) reinstate Claimant's MA application dated [REDACTED], including retroactive MA benefits from 2/2014; and
- (2) initiate processing of Claimant's MA eligibility subject to the finding that DHS improperly counted SBO trust corpus as a Claimant asset.

The actions taken by DHS are **REVERSED**.



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

Date Signed: **12/5/2014**

Date Mailed: **12/5/2014**

CG / 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:

