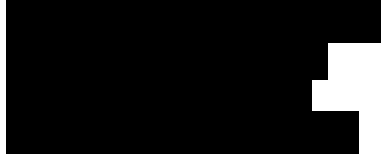


**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**



Reg. No.: 14-010967  
Issue No.: 2001  
Case No.: [REDACTED]  
Hearing Date: December 03, 2014  
County: DELTA

**ADMINISTRATIVE LAW JUDGE:** Susanne E. Harris

**HEARING DECISION**

Following the 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 four-way telephone hearing was held on December 3, 2014, from Lansing, Michigan. Participants on behalf of the Claimant included her attorney, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist, [REDACTED] and [REDACTED] of the Department Central Office, and Assistant Attorney General, [REDACTED].

**ISSUE**

Did the Department properly deny the Claimant's application for Medical Assistance (MA) 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. On July 31, 2014, the Department processed the Claimant's DHS-4574B, Initial Asset Assessment.
2. The Claimant has a Sole Benefit Trust which the Department determined was valued at \$147,040 that the Department concluded was a countable asset.
3. The trust contains a provision requiring that during the last calendar month of each fiscal year the trustee shall pay or distribute to the Claimant's spouse, for his benefit during his lifetime part or all of the net income and principal of the trust that the trustee determines is necessary in order to distribute the resources in an actuarially sound basis.

4. At some point in time in the summer of 2014, the Department changed its interpretation of its trust policy. Previous to the change, a Sole Benefit Trust was not counted as a resource. After the change of interpretation, a Sole Benefit Trust was determined to be a countable resource. The actual policy did not change.
5. On August 26, 2014, the Department sent the Claimant a DHS-1606, Health Care Coverage Determination Notice which informed the Claimant that her application for MA was denied due to excess assets.
6. On September 8, 2014, the Department received the Claimant's hearing request protesting the denial of her application.

### **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.

In this case, the Department argues that the Claimant's trust is a Medicaid trust because it meets all of the following criteria set forth in Bridges Eligibility Manual (BEM) 401 (2014) pp. 5, 6,:

1. The person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility, an MA post-eligibility patient-pay amount, a divestment penalty or an initial assessment amount. A person's resources include his spouse's resources.
2. The trust was established by the Claimant's spouse.
3. The trust was established on or after August 11, 1993.
4. The trust was not established by a will.
5. The trust is not described in Exception A, Special Needs Trust, or Exception B, Pooled Trust in policy.

BEM 401, p. 10, provides that how much of the principal of the trust is a countable asset depends on the terms of the trust and whether any of the principle consists of countable assets or countable income. SSI-related MA policy in BEM 400 determines which assets are countable and instructs departmental workers to not consider an asset unavailable because it is owned by the trust rather than the person.

In this case, the trust in question requires that the Claimant's husband received a payment from the trust during the last calendar month of each fiscal year, as the trustee determines is necessary in order to distribute the resources in an actuarially sound basis.

BEM 401, p. 11, instructs Department personnel to count as the 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. In this case, the trust in question requires that the Claimant's husband received a payment from the trust during the last calendar month of each fiscal year, as the trustee determines is necessary in order to distribute the resources in an actuarially sound basis. The Department argues that this is the condition under which payments are made; ie, the requirement that the payment issue yearly is the condition which makes the trust an irrevocable trust. Sole Benefit (SBO) trusts are therefore always considered to be irrevocable as they contain just such a condition so that they can be actuarially sound so as not to fail the divestment rule.

During the hearing, the Claimant's attorney argued that the term "the person" refers strictly to the Medicaid applicant. Therefore, the trust is a transfer for less for fair market value and therefore would be subject to divestment, but for the fact that BEM 405, p. 9, provides that no divestment penalty attaches to resources transferred from the Claimant or her spouse to another solely for the benefit of the Claimant's spouse. The Department argued that the term "the person" refers to the trust beneficiary and is therefore a countable asset which puts the Claimant over the asset limit to be eligible for MA.

During the hearing, the Department conceded that it has changed its interpretation of policy in regards to SBO trusts. That change would be that SBO trust assets were not countable up until July or August of 2014. At that time, the Department changed its interpretation of the policy so that SBO trust assets would be countable. The policy itself never changed. Before the change in interpretation of the policy, if the distribution from the trust to the community spouse occurred in the future, the asset was not countable. The Department testified that, prior to the change in its interpretation of the policy in the summer of 2014; the trust assets in this case would not be countable.

The record was held open until December 15, 2014 to afford both parties had an opportunity to brief the issue for the Administrative Law Judge. It is the jurisdiction of this Administrative Law Judge to determine whether or not the Department was acting in accordance with its policy when taking action to deny the Claimant's application for MA.

The Administrative Law Judge recognizes that it is not her jurisdiction to decide whether or not a due process violation occurs when the Department just simply decides it wants to change its interpretation of the policy rather than actually change its policy. However, when the Department changes its interpretation of the policy, this Administrative Law Judge is left to wonder whether or not the Department is now acting in accordance with its policy under the change of interpretation or whether the department was acting in accordance with its policy before its change in interpretation of said policy.

Both parties cite to the Federal Regulations to support their positions. The Administrative Law Judge looks strictly to the Department's policy. Throughout BEM 401, distinctions are made between "the person," and "the person and the person's spouse." Indeed, distinctions are made between "the person" and "the other person." This Administrative Law Judge determines that a plain reading of the policy would not lead one to understand that "the person" refers to a trust beneficiary as opposed to the actual MA applicant. It certain does not infer that it references more than a singular person. The Departments new interpretations of the policy and the words, "the person," are ambiguous at best and completely confounding at worst. Furthermore, such confusion is easily rectified by a rewriting of such policy as opposed to a change in interpretation of the policy with no notice to those who have relied on previous interpretations of the policy. Lastly, the evidence does not even establish when exactly it was that the Department changed its interpretation of the trust policy in relation to the Claimant's MA application date. The record is not clear as to the actual application date, though the hearing summary indicates that the Claimant's application was processed on July 31, 2014. The change in interpretation of the policy is said to have occurred in July or August and as such, it is not even clear that the change in interpretation of the policy was properly applied to the Claimant's application. The Department does not meet its burden of proving that it was acting in accordance with its policy when taking action to deny the Claimant's application for MA.

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 took action to deny the 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. Re-determine the Claimant's eligibility for MA back to the application date without counting the SBO trust as an asset, and

2. Issue the Claimant any supplement she may thereafter be due.



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Susanne E. Harris  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **1/6/2015**

Date Mailed: **1/6/2015**

SEH/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 48909-8139

cc:

