

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

IN THE MATTER OF:

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████████████████
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Reg. No.: 14-015630
Issue No.: 2001
Case No.: ██████████
Hearing Date: February 9, 2015
County: WAYNE-DISTRICT 82
(ADULT MEDICAL)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 February 9, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's spouse, ██████████ ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA) application effective September 1, 2014, 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 September 1, 2014, the spouse applied for the MI Choice Waiver Program (hereinafter referred to as the "MA waiver program") on behalf of the Claimant. See Exhibit 1, p. 1.
2. On October 7, 2014, the Department sent Claimant an Initial Asset Assessment (IAA) Notice (IAA Notice), which indicated the IAA was completed on July 15, 2014. See Exhibit 1, pp. 3-5. The IAA indicated the couple's countable assets was \$2,224.89 and the amount protected for the patient's spouse is one-half of the IAA Amount but not less than \$23,448 or more than \$117,240. See Exhibit 1, pp. 3-5.

3. The couple's total countable assets of \$2,224.89 were based on both Claimant and his spouse's ending checking balance on June 19, 2014. See Exhibit 1, pp. 12-17.
4. On October 15, 2014, the Department sent Claimant a Health Care Coverage Determination Notice (determination notice) notifying him that his MA application was denied effective September 1, 2014, ongoing, due to excess assets. See Exhibit 1, p. 6.
5. On October 28, 2014, Claimant's spouse filed a hearing request, protesting the MA denial. See Exhibit 1, p. 2.

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 the present case, on September 1, 2014, the spouse applied for the MA waiver program on behalf of the Claimant. See Exhibit 1, p. 1.

The MA waiver program provides home and community-based services for aged and disabled persons who, if they did not receive such services, would require care in a nursing home. BEM 106 (July 2013), p. 1. Waiver services are covered for MA recipients who:

- Medically qualify, or
- Seek or have an expanded Home Help Program exception grant of \$1000 or more per month, and
- Are age 65 or over, or
- At least age 18 and disabled.

BEM 106, p. 1.

Special MA policies to use in the eligibility determination are:

- A waiver participant is a group of one even when he lives with his spouse (BEM 211).
- The Special MA Asset Rules in BEM 402 apply.
- MA divestment policy in BEM 405 applies to waiver participants.
- The extended-care category is available to waiver participants (BEM 164).
- Income must be at or below 300% of the SSI Federal Benefit Rate.

BEM 106, p 3. Based on the above information, policy states that the extended-care category is available to waiver participants. See BEM 106, p. 3. MA – Extended-Care is a Supplemental Security Income (SSI)-related Group 1 MA category. BEM 164 (October 2014), p. 1. As such, certain assets are considered countable for SSI-Related MA only. See BEM 400 (October 2014), pp. 1-67.

Additionally, the MA waiver program requires the Department to determine Claimant's eligibility using the Special MA Asset Rules located in BEM 402. For a waiver patient/client (Claimant in this case), eligibility for SSI-related MA categories is subject to a \$2,000 asset limit applicable to an asset group of one. BEM 211 (January 2014), p. 4; BEM 402 (April 2014), p. 3. When the waiver client is married, the Department excludes the protected spousal amount (PSA), a portion of the couple's assets protected for use by the community spouse, from the calculation of the waiver client spouse's asset-eligibility for MA. BEM 402, pp. 4 and 9.

In calculating a client's MA asset-eligibility, the Department performs an IAA to calculate the couple's total countable assets as of the first day of the waiver client spouse's first continuous period of care to determine the PSA. BEM 402, pp. 1 and 7. In general, in the absence of a court order or hearing to the contrary, the PSA is equal to one-half of the couple's total countable assets, as calculated at the IAA, subject at the time of Claimant's MA application in 2014 to a minimum of \$ 23,448 and a maximum of \$117,240. See Exhibit 1, pp. 3-5 and 2014 SSI and Spousal Impoverishment Standards, *Centers for Medicare & Medicaid Services*, January 2014, p. 1. Available at <http://medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/Spousal-Impoverishment-2014.pdf>.

When the waiver client spouse applies for MA, the amount of his or her countable assets for initial asset eligibility is equal to (i) the value of the couple's (his, her, their) countable assets for the month being tested minus (ii) the PSA. BEM 402, p. 4. If the result of this calculation is greater than the applicable \$2,000 asset limit for MA eligibility, the waiver patient spouse is ineligible for MA. BEM 402, p. 4. Applicants eligible for the processing month are automatically asset eligible for up to 12 calendar months (the presumed asset eligible period). BEM 402, pp. 4-5.

Asset eligibility is required for SSI-related MA categories. BEM 400, p. 5. For example, checking and draft accounts are countable assets. See BEM 400, pp. 14-15. The

Department uses the special asset rules in BEM 402, SPECIAL MA ASSET RULES, for certain married L/H and waiver patients. BEM 400, 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. BEM 400, p. 6.

In this case, the Department calculated the couple's countable assets to be \$2,224.89. See Exhibit 1, p. 5. This amount was based on both Claimant and his spouse's ending checking balance on June 19, 2014. See Exhibit 1, pp. 12-17. However, Claimant's spouse disputed the couple's countable assets calculated by the Department. Claimant's spouse argued this amount is lower as of result of outstanding bills. A review of checking account found that the Department improperly calculated this asset. The Department failed to exclude Claimant's unearned income (Social Security benefits/RSDI) and the spouse's earned income (employment earnings) in the calculation of the asset. Funds cannot be counted as both income and as assets in the same month. BEM 500 (July 2014), p. 5. The Department does not include funds entered as income in asset amounts. BEM 500, p. 5. The Department uses this exclusion only if the funds are not commingled with countable assets and are not in time deposits. BEM 400, p. 20. The Department does not count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 20. As such, Claimant and his spouse's income should have not been counted as an asset in accordance with Department policy. See BEM 400, pp. 20-22 and BEM 500, p. 5. The Department will have to recalculate the checking account asset and exclude Claimant's and his spouse's income from the asset calculation in accordance with Department policy.

Moreover, the Department improperly denied Claimant's MA application based on excess assets. In this case, it appears the total value of the couple's countable assets minus the PSA was below the \$2,000 asset limit for MA eligibility. BEM 402, pp. 1 - 7. Furthermore, the couple's countable assets were below the protected spousal amount of \$23,448. See Exhibit 1, pp. 3-5. Nevertheless, the Department acknowledged that it miscalculated the IAA in error. Therefore, the Department will reprocess Claimant's application including recalculation of the IAA in accordance with Department policy.

It should be noted that during the hearing it was discovered there were other possible assets not included in the calculation of the IAA. All of the accounts belonged to the spouse and are listed as follows: (i) a savings account; (ii) an Individual Retirement Account (IRA); (iii) a life insurance policy; and (iv) an additional property. See Exhibit 1, pp. 7-11 and 18-30 (emphasis added as it is undetermined if these other accounts are assets or even countable). This Administrative Law Judge (ALJ) will not make a determination if these additional accounts are considered assets and countable because the IAA in this case only budgeted the checking account.

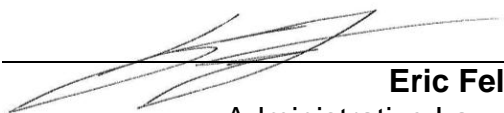
DECISION AND ORDER

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 did not act in accordance with Department policy when it denied Claimant's MA application effective September 1, 2014.

Accordingly, the Department's MA 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. Initiate re-registration and re-processing of Claimant's MA application dated September 1, 2014;
2. Recalculate the MA budget and initial asset assessment (including Claimant and his spouse's countable assets), in accordance with Department policy;
3. Issue supplements to Claimant for any MA benefits he was eligible to receive but did not in accordance with Department policy; and
4. Notify Claimant of its MA decision in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/18/2015**

Date Mailed: **2/18/2015**

EJF / cl

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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