

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

IN THE MATTER OF:

████████████████████
██████████
████████████████████

Reg. No.: 14-016052
Issue No.: 2001
Case No.: ██████████
Hearing Date: February 25, 2015
County: MACOMB- (MT CLEMENS)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on February 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Attorney ██████████, ██████████, and ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████, Hearings Facilitator.

ISSUE

Did the Department properly determine Claimant's countable assets with regards to the Medical Assistance (MA) program?

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 applied for MA on January 31, 2014.
2. An initial asset assessment (IAA) was run with a start date of December 3, 2013.
3. Claimant entered the hospital on September 23, 2013.
4. Among assets considered was a guaranteed price funeral contract, which was listed as a countable asset.
5. Claimant signed a DHS-8A, Irrevocable Funeral Contract Certification on April 1, 2014.

6. This DHS-8A was never certified or denied certification by the Department.
7. Based upon the results of the IAA and the assets considered as countable, Claimant's MA application was denied for excess assets on September 23, 2014.
8. On November 25, 2014, Claimant requested an administrative hearing.

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In the current case, the Department argues that Claimant's assets rendered him ineligible for MA benefits, based on the calculations it made when processing Claimant's January 31, 2014 MA application. Claimant may very well be ineligible for MA benefits; however, based on the testimony and evidence provided, it appears that the asset calculations were incorrectly performed, and as such, the current asset determination should be recalculated.

Among other things listed by the Department as a countable asset and considered as part of Claimant's final asset total was a guaranteed price funeral contract, dated September 15, 1976.

Funds in an irrevocable prepaid funeral contract are unavailable and thus are not counted. BEM 400, pg 49 (2014).

Only a guaranteed price contract may be certified irrevocable. BAM 805, pg. 1 (2014). In order for a guaranteed price contract to be certified as an irrevocable contract, a DHS-8A must be completed by the Claimant and their funeral director, and returned to the local office. After, completion, the local office director must review the contract and certify a contract as irrevocable if it meets policy criteria; if a disapproval is necessary, the disapproval must be explained by the Department on that form. BAM 805, pg 3 (2014).

While a DHS-8A was submitted to the Department (Claimant Exhibit 5), it does not appear that any attempt was made to either certify or deny the contract as irrevocable. If the DHS-8A and the contract were denied approval, no reasons were given why, despite policy specifically requiring notification of the reasons for denial.

As such, because the guaranteed price funeral contract was included as a countable asset with no documented certification or denial of certification of irrevocability, the Department erred, as policy specifically requires a request for certification to be acted upon.

Upon application, the Department completed an initial asset assessment (IAA), and assessed Claimant's assets with a start date of December 3, 2013; this was the date that Claimant entered a nursing home. Department Exhibit D.

Per policy, an initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse. An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the first continuous period of care that began on or after September 30, 1989. BEM 402, pg. 7 (2014).

While Claimant may have entered a nursing home on December 3, 2013, Claimant entered the hospital on September 23, 2013. Claimant Exhibit 3. Per credible testimony, Claimant entered the nursing home directly after hospitalization.

Per policy, an IAA is conducted based upon the first day of continuous care, not nursing home entry. As Claimant began care on September 23, 2013, this date should have been used for the IAA, not December 3, 2013. As such, the Department's IAA was incorrectly run, and as such, Claimant's assets were incorrectly determined.

As Claimant's assets were determined incorrectly, based on both the IAA start date and the inclusion of Claimant's funeral contract without certification or denial, the Department's denial of Claimant's MA application for asset ineligibility was incorrect. The Department must reprocess Claimant's January 31, 2014 MA application, using a correct IAA start date, and reviewing Claimant's funeral contract, as given with the DHS-8A in the file, for certification or denial of irrevocability.

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 January 31, 2014 MA application for asset ineligibility.

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. Reprocess Claimant's January 31, 2014 MA application, using a continuous care start date of September 23, 2013 for the Initial Asset Assessment and processing Claimant's DHS-8A in accordance with policy found in BAM 805.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/15/2015**

Date Mailed: **5/15/2015**

RJC / tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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]
[REDACTED]
[REDACTED]
[REDACTED]