

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 the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

Additionally, asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. Checking and savings accounts are counted as cash assets. In the Claimant's case, the Department utilized the Medicaid asset limit of \$2,000 for an asset group of one. Money in bank accounts, including checking, draft, savings and share, is considered an asset. A life insurance policy is an asset if it can generate a Cash Surrender Value (CSV). A policy is the policy owner's asset. A policy's value is its CSV. Funds in an irrevocable prepaid funeral contract are unavailable and thus are not counted. BEM 400 (1/1/2013) pages 5-38.

A Claimant must cooperate with the local office in determining initial and ongoing eligibility, including completion of necessary forms, and must completely and truthfully answer all questions on forms and in interviews. BAM 105 (3/1/2013) page 5.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. Verifications are considered timely if received by the date they are due. The Department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. The Department worker must tell the client what verification is required, how to obtain it, and the due date. For MA, if the client cannot provide the verification despite a reasonable effort, the time limit can be extended up to three times. If neither the client, nor the Department worker can obtain verification despite a reasonable effort, the Department worker is to use the best available information. If no evidence is available, the Department worker is use their best judgment. BAM 130 (5/1/2012) pages 1-6.

In processing the April 25, 2013, Medicaid application, the Department determined that the Claimant's countable assets were [REDACTED]. This included two life insurance policies and a countable balance in the Claimant's bank account. For the Claimant's life insurance, on May 23, 2013, [REDACTED] issued a check for [REDACTED] and on May 24, 2013, [REDACTED] issued a check for [REDACTED]. (Exhibit 2) The Irrevocable Funeral Contract for the Claimant was for [REDACTED] and went into effect June 6, 2013. (Exhibit 3) This still left assets totaling over [REDACTED] for the Claimant. Accordingly, on June 6, 2013, the Department denied the Claimant's April 25, 2013, application due to

excess assets. However, the Eligibility Specialist stated the Claimant was later found eligible for Medicaid for June 2013, so the remaining issue is with the month of May 2013.

The Claimant's daughter testified that both her parents are in a nursing home. Her father went into the nursing home first, and the Claimant went in in April 2013. The Claimant's daughter explained that they filed to surrender the value of the life insurance policies as quickly as possible. However, the documents to cash out the life insurance could not be faxed, so there were delays for mailing. Further, the bank held some of the funds deposited on June 5, 2013 until June 7, 2013 and the remainder of the deposit until June 14, 2013. Accordingly, the Claimant's daughter asserted that the funds were unavailable to spend down before June 2013. (See also Exhibit A)

It was also noted that an irrevocable funeral contract was also purchased for the Claimant's spouse for just over [REDACTED]. The Department confirmed that they received a copy of that irrevocable funeral contract and it was placed in his Medicaid case file. It appears that irrevocable funeral contract was utilized by the Department in determining Medicaid eligibility for the Claimant's spouse. Similarly, the [REDACTED] check issued to the Claimant's spouse was not counted as an asset in determining the Claimant's Medicaid eligibility. (See Exhibit 2, page 2)

Regarding the availability of assets, BEM 400 states an asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. The Department is to assume an asset is available unless evidence shows it is not available. BEM 400 (1/1/2013) page 7. However, the Department policy does not appear to allow for an exclusion of an asset during processing time. For example an asset remains available during periods in which a guardian or conservator is being sought. BEM 400 page 7.

While it is understandable that it took time to receive and return the paperwork to cash out the Claimant's life insurance and for the bank to release the funds deposited on June 5, 2013, the life insurance policies were assets that the Claimant had the legal right to use or dispose of in April and May 2013. The Department policy does not support an exclusion of these funds while waiting for the life insurance company to process the request to cash out a policy, the period from when the check is issued to when it is deposited, nor from when the deposit is made to when the bank releases a hold on the deposit. During all these delays, the BEM 400 policy would consider the assets available because the Claimant still had the legal right to use or dispose of them. Availability under BEM 400 does not appear to mean when actual funds are available for use. Accordingly, the evidence supports the Department's June 6, 2013 determination to deny the Claimant's April 25, 2013 Medicaid application.

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 acted in accordance with Department policy when it denied the Claimant's April 25, 2013, Medicaid application due to excess assets.

DECISION AND ORDER

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



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/26/2013

Date Mailed: 12/26/2013

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

2014-10944/CL

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

CL/pw

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