

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-15058
Issue No(s): 2001
Case No.: ██████████
Hearing Date: April 21, 2014
County: Wayne (18)

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 three-way telephone hearing was held on April 21, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative (AHR), ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Assistant Payment Supervisor; and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA) benefits for July 2013 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 August 30, 2013, the authorized representative (AR) (who is also the AHR) applied for MA benefits on behalf of the Claimant and sought retroactive coverage to July 2013. See Exhibit B.
2. On the application, Claimant indicated checking accounts; real estate/property; vehicle; and income in the amount of \$2,000. See Exhibit B.
3. On September 5, 2013, the Department sent the AR a Verification Checklist (VCL), which requested verification for the months of July and August 2013 regarding

stocks, spousal support direct from spouse, and checking account. See Exhibit B. The verifications were due back by September 16, 2013. See Exhibit B.

4. On September 16, 2013, the AR sent the Department verification of bank account; copies of unpaid medical bills; indicated that Claimant does not have stocks/bonds; making an attempt to obtain verification of alimony; and requested an extension until September 26, 2013. See Exhibit B.
5. On September 25, 2013, the AR sent verification of spousal support income (alimony), additional bank statements, medical records, and also requested an extension until October 6, 2013. See Exhibit B.
6. On October 4, 2013, the AR sent additional medical records, RSDI award letter, and requested an additional extension until October 16, 2013. See Exhibit B.
7. On October 17, 2013, the Department sent the AR a Facility Admission Notice, which denied Claimant's MA eligibility for July 2013 due to excess assets. See Exhibit A.
8. On November 25, 2013, Claimant's AHR requested a hearing, disputing the MA denial for July 2013. See Exhibit 1.
9. On January 23, 2014, the Michigan Administrative Hearing System (MAHS) sent the AHR a Notice of Hearing, which scheduled a hearing for February 3, 2014.
10. On January 31, 2014, the AHR requested an adjournment because the Claimant passed away on January 3, 2014.
11. On February 6, 2014, the Administrative Law Judge (ALJ) sent the AHR an Order Granting Adjournment.
12. On February 13, 2014, the MAHS sent the AHR a Notice of Hearing, which rescheduled a hearing for February 27, 2014.
13. On February 28, 2014, the MAHS sent an Order of Dismissal.
14. On April 2, 2014, the AR sent a request to vacate dismissal.
15. On April 7, 2014, the Supervising ALJ sent the AHR an Order Vacating the Dismissal and Order to Schedule Matter for Hearing.
16. On April 9, 2014, the MAHS sent the AHR a Notice of Hearing, which rescheduled a hearing for April 21, 2014.

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.

Preliminary matter

On August 15, 2013, the Department sent the AR a Notice of Case Action notifying the AR that Claimant's MA application was denied effective May 1, 2013, ongoing, due to excess assets. See Exhibit 1. At first, it appeared that the AHR filed a hearing request untimely (ninety days after the date of written notice). However, it was discovered that the denial notice was in regards to a previous application.

Subsequent to the denial letter, the AR, again, applied for MA benefits on August 30, 2013, retroactive to July 2013. See Exhibit B. The evidence presented that no Notice of Case Action was sent regarding the subsequent application. On October 17, 2013, the Department sent the AR a Facility Admission Notice, which denied Claimant's MA eligibility for July 2013 due to excess assets. See Exhibit A. On November 25, 2013, Claimant's AHR requested a hearing, disputing the MA denial for July 2013. See Exhibit 1. Therefore, the AHR had a timely hearing request because it requested a hearing within ninety days of being notified of the MA denial. See BAM 600 (March 2014), pp. 4-6.

Additionally, even though a Notice of Case Action was never generated for the application dated August 30, 2013, ultimately, both parties were present to address the MA denial for July 2013 (excess assets). As such, the hearing proceeded to address the MA denial for July 2013 for excess assets.

MA application

All types of assets are considered for SSI-related MA categories. BEM 400 (October 2013), p. 2. Group 2 Spend-Down (G2S) is an SSI-related Group 2 MA category. BEM 166 (July 2013), p. 1. Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories. BEM 400, p. 5.

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. For all other SSI-related MA categories, the asset limit is \$2,000 for an asset group of one or \$3,000 for an asset group of two. BEM 400, p. 7. It is not disputed that this case involves the \$2,000 asset group of one.

For SSI-Related MA cases, checking and drafts accounts, savings and share accounts, money market accounts, and LTC patient trust fund and all other money held by the facility for the patient are types of cash assets. BEM 400, p. 14.

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. For example, spouse support (alimony) and Social Security benefits are considered unearned income. See BEM 503 (July 2013), pp. 28-32. Thus, the Department will exclude these payments as assets. BEM 400, p. 20.

In this case, on August 30, 2013, the AR (who is also the AHR) applied for MA on behalf of the Claimant and sought retroactive coverage to July 2013. See Exhibit B. On the application, Claimant indicated checking accounts; real estate/property; vehicle; and income in the amount of \$2,000. See Exhibit B.

On September 5, 2013, the Department sent the AR a VCL, which requested verification for the months of July and August 2013 regarding stocks, spousal support direct from spouse, and checking account. See Exhibit B. The verifications were due back by September 16, 2013. See Exhibit B. On September 16, 2013, the AR sent the Department verification of bank account; copies of unpaid medical bills; indicated that Claimant does not have stocks/bonds; making an attempt to obtain verification of alimony; and requested an extension until September 26, 2013. See Exhibit B.

Additionally, on September 25, 2013, the AR sent verification of spousal support income (alimony), additional bank statements, medical records, and also requested an extension until October 6, 2013. See Exhibit B. On October 4, 2013, the AR sent additional medical records, RSDI award letter, and requested an additional extension until October 16, 2013. See Exhibit B. On October 17, 2013, the Department sent the AR a Facility Admission Notice, which denied Claimant's MA eligibility for July 2013 due to excess assets. See Exhibit A.

In the present case, both parties discussed three potential bank accounts in reviewing the MA asset test. Each account will be discussed below.

First, the Department presented Claimant's checking account for a statement period of 6/20/13 to 7/19/13 and indicated an ending balance of \$3,663.55. See Exhibit 1. The Department inferred that this amount was above the \$2,000 asset limit and she was not eligible for MA benefits (July 2013). However, the AHR testified that the Department failed to exclude the \$2,000 alimony Claimant received for that month. A review of the statement indicated a deposit of \$2,000 (transfer from another account). See Exhibit 1. The AHR testified that the \$2,000 should be subtracted from the \$3,663.55 balance and this would result in the asset being below \$2,000.00.

Moreover, the Department testified that the statement lacks the description to show that the transfer is her actual alimony. Additionally, the Department testified that it did not know her alimony was being deposited into the account. However, on September 25, 2013, the AHR did send correspondence to the Department that Claimant received

\$2,000 in alimony. See Exhibit B. Also, the application indicated that Claimant received \$2,000 in income. See Exhibit B. Therefore, the evidence presented that the Department was aware of Claimant's monthly alimony in the amount of \$2,000 and that the Department will exclude these payments as an asset. BEM 400, p. 20 and BEM 503, pp. 28-32. It should be noted that the Department provided an additional statement for the remaining days of July 2013. See Exhibit B. A review of both statements indicated the lowest daily balance was \$1,494.98 on July 30, 2013. See Exhibit B.

Second, the Department presented an interest checking account that included Claimant's name; her mother's name; and her sister's name. See Exhibit 1. The Department testified that this account had a balance of \$2,466.54. See Exhibit 1. Thus, again, the Department inferred that this amount was above the \$2,000 asset limit and she was not eligible for MA benefits (July 2013).

The AHR testified that this account should not be included in the asset test because it only belonged to the Claimant's mother. The AHR testified that Claimant and her sister are listed on the account for emergency only. The Department testified that it had no knowledge of such information.

An asset must be available to be countable. BEM 400, p. 9. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. Assume an asset is available unless evidence shows it is not available. BEM 400, p. 9. Availability might also be affected by joint ownership and efforts to sell. BEM 400, p. 9.

For SSI-Related MA, jointly owned assets are assets that have more than one owner. BEM 400, p. 11. An asset is unavailable if an owner cannot sell or spend his share of an asset: without another owner's consent, and the other owner is not in the asset group, and the other owner refuses consent. BEM 400, p. 11.

Based on the foregoing information and evidence, the interest checking account is an available asset and therefore, it is countable in this case. The Department acted in accordance with Department policy when it included the interest checking as an asset based on the statement provided, which included all three names under the account. See Exhibits 1 and B. This is considered a jointly owned asset. See BEM 400, p. 11. Moreover, there was no evidence presented that asset is unavailable without the owner's consent. BEM 400, p. 1. It should be noted that the Department provided an additional statement for the remaining days of July 2013. See Exhibit B. A review of both statements indicated the lowest daily balance was \$735.58 on July 31, 2013. See Exhibit B.

Also, the statement included \$1,142 in direct deposit from the Social Security Administration. See Exhibit B. As stated above, the Department would exclude this income as an asset. BEM 400, p. 20 and BEM 503, pp. 28-32.

Third, the Department presented a premium money market bank statement for 6/7/13 to 7/5/13 and indicated a deposit balance of \$1,430.40. See Exhibits 1 and B. The statement also included Claimant's name, her mother's name, and sister's name. See Exhibits 1 and B. However, the AHR provided further documentation of the premium money market account, which showed only the names of the mother and sister. See Exhibit 1. Because the Claimant is not listed on the premium money market, this account will not be considered in the asset test. See BEM 400, pp. 9-10.

Based on the foregoing information and evidence, the Department improperly denied Claimant's MA eligibility for July 2013 due to excess assets. A review of Claimant's assets indicated that they were less than the \$2,000 asset limit in at least one day during July 2013. See BEM 400, p. 6.

First, Claimant's checking account (only in her name) indicated that her daily balance for July 1, 2013 was \$6,023.37. See Exhibit B. By the end of the month, Claimant's balance depleted to \$1,494.96 on July 30, 2013. See Exhibit B. Claimant spent more than \$4,500 between this time periods. See Exhibit B. Per policy, the Department would exclude the \$2,000 alimony that was deposited in Claimant's account on July 1, 2013. See Exhibit B and BEM 400, p. 20. If the Department excluded the \$2,000 alimony, Claimant's starting balance for July 1, 2013 would be approximately \$4,023. However, as stated above, Claimant spent more than \$4,500 for July 2013. This means that Claimant spent more money than the income that was coming into the account. In fact, she would have been in the negative but not for the \$2,000 alimony. Therefore, Claimant was below the \$2,000 asset limit in regards to the checking account (only in her name) due to the exclusion of the alimony.

Second, Claimant's joint account indicated that her daily balance for July 1, 2013 was \$1,393.23. See Exhibit B. On July 3, 2013, there was a \$1,142 direct deposit by social security, which resulted in her daily balance being \$2,510.24 on that date. See Exhibit B. By the end of the month, Claimant's balance depleted to \$735.58 on July 31, 2013. See Exhibit B. Claimant spent more than \$1,770 between this time period. See Exhibit B. Per policy, the Department would exclude the \$1,142 social security deposit in the account on July 3, 2013. See Exhibit B and BEM 400, p. 20. If the Department excluded the \$1,142 income, Claimant's starting balance for July 3, 2013 would be approximately \$1,368. However, as stated above, Claimant spent more than \$1,770 for July 2013. This means that Claimant spent more money than the income that was coming into the account. In fact, she would have been in the negative but not for the social security income. Therefore, Claimant was below the \$2,000 asset limit in regards to the joint account due to the exclusion of the social security.

In summary, Claimant spent more money in the accounts than the income that was coming in, which indicated her assets were below the \$2,000 asset group of one. Therefore, Claimant has met the asset limit test and the Department will redetermine Claimant's MA eligibility for July 2013. BEM 400, pp. 6, 7, and 20 and BEM 503, pp. 28-32.

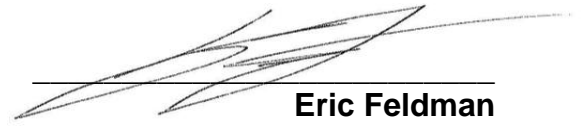
DECISION AND ORDER

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 improperly denied Claimant's MA benefits for July 2013 due to excess assets.

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. Redetermine Claimant's MA eligibility for July 2013;
2. Begin recalculating the MA budget for July 2013, in accordance with Department policy;
3. Issue supplements to Claimant's for any MA benefits she was eligible to receive but did not for July 2013; and
4. Notify Claimant and Claimant's AHR in writing of its MA decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 1, 2014

Date Mailed: May 1, 2014

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

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

EJF/cl

cc:

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