

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-32949
Issue No(s): 2001
Case No.: [REDACTED]
Hearing Date: April 17, 2014
County: Isabella County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist, [REDACTED], Eligibility Specialist, and [REDACTED] Lead Worker.

ISSUE

Did the Department properly close Claimant's Medicaid case based on assets in excess of program limits?

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 was a recipient of Medicaid and Medicare Savings Program benefits.
2. On March 6, 2014, a Notice of Case Action was issued to Claimant stating the Medicaid case would close effective April 1, 2014 based on assets in excess of program limits.
3. On March 14, 2014, Claimant filed a request for hearing contesting the Department's action.

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.

Additionally, the applicable MA asset limit for Claimant's case was \$2,000. BEM 400.

BEM 400 directs that homes and real property are considered assets. To determine the fair market value of real property and mobile homes the Department utilizes: Deed, mortgage, purchase agreement or contract; State Equalized Value (SEV) on current property tax records multiplied by two; Statement of real estate agent or financial institution; Attorney or court records; County records. The value is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. Liens must be filed with the register of deeds or other appropriate agency. Deeds are considered legal if they are signed and notarized. It does not have to be registered with the registrar of deeds to be a legal document. BEM 400.

However, an exclusion is allowed for one homestead for an asset group. A homestead is where a person lives (unless Absent from Homestead, see below) that they own, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). BEM 400

Regarding absence from homestead, BEM 400 states:

SSI-Related MA Only

Exclude a homestead that an owner formerly lived in if **any** of the following are true:

- The owner intends to return to the homestead.
- The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.
- A co-owner of the homestead uses the property as his home.

Relative Occupied. Exclude a homestead even if the owner never lived there provided both of the following are true:

- The owner is in an institution; see BPG Glossary.
- The owner's spouse or relative (see below) lives there.

Relative for this purpose means a person dependent in any way (financial, medical, etc.) on the owner and related to the owner as any of the following:

- Child, stepchild or grandchild.
- Parent, stepparent or grandparent.
- Aunt, uncle, niece or nephew.
- Cousin.
- In-law.
- Brother, sister, stepbrother, stepsister, half- brother or half-sister.

BEM 400

In this case, the Department determined that Claimant's homestead should be counted as an asset, which put Claimant over the asset limit for Medicaid, \$ [REDACTED]. The value of the home was counted as \$ [REDACTED] based on land tax record listing Claimant as owner. There was also a vehicle counted as an asset with a value of \$ [REDACTED]. It is noted that the Department did not provide any evidence of what the vehicle asset was based on. Rather, a statement in the hearing summary indicates that the Secretary of State did not show any report of vehicle assets for Claimant.

On February 24, 2014, Claimant reported in a phone conversation that she was living with her mother at an address on Chippewa Rd. from Sunday evening to Saturday morning, does not purchase or prepare food with her mother, and does not pay rent to stay with her mother. Claimant reported she pays taxes at the address on Bluegrass Rd., she is the owner of that property, her children live at the Bluegrass Rd. address and she does not change them rent.

On March 4, 2014, the Department checked Claimant's address with the Secretary of State, which was on County Lane.

On March 5, 2014, the Department spoke with Claimant's son by phone, who reported residing at the Bluegrass home with his girlfriend, two brothers, the girlfriend of one brother, and that none of them pay rent to Claimant.

Claimant's testimony indicated she was temporarily absent from the home on Bluegrass several days per week over the winter because she was providing care for her mother who has Alzheimer's. Claimant indicated care for her mother was shared with a sister, when the sister is available. Claimant explained that she also needed to get away from the house on Bluegrass because of issues with her daughter in law. Claimant testified she usually spent one night per week at the home on Bluegrass over the winter and

intended to return there when the weather was warmer and her sister returned from West Virginia. Claimant acknowledged that she had not updated her address with the Secretary of State since the change to the address on County Lane. Lastly, Claimant testified she has a Jeep, but the motor blew up, and she only paid \$400 for in when it was running.

A June 2013 email from Claimant to the Eligibility Specialist documents, in part, that Claimant previously reported sharing caregiving of her mother with a sister.

The BEM 400 policy allowing for a homestead to be excluded when it is occupied by a relative does not apply in this case because the Claimant is not in an institution.

It appears that the Department overlooked the part of Claimant's report that she only stays with her mother from Sunday evening to Saturday morning. It does not appear the Department inquired where Claimant spent Saturday night or if Claimant intended to return to the home on Bluegrass Rd. Accordingly, it is unclear whether the Department considered the BEM 400 policy addressing absence from homestead that allows for a homestead to be excluded when the owner intends to return to the homestead. Further, insufficient evidence was provided to establish the counted vehicle asset value of \$1,075.

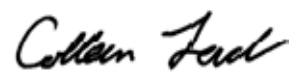
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's Medicaid case based on assets in excess of program limits.

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-instate Claimant's Medicaid case retroactive to April 1, 2014 and re-determine eligibility in accordance with Department policy.
2. Issue Claimant written notice of any case actions in accordance with Department policy.



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

Date Signed: May 8, 2014

Date Mailed: May 8, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

CL/hj

cc:

