

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

IN THE MATTER OF:

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

Reg. No.: 2014-3325
Issue No(s): 2013
Case No.: ██████████
Hearing Date: November 14, 2013
County: Ionia-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on November 14, from 2013, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearings Representative, ██████████, from the Area Agency on Aging. Participants on behalf of the Department of Human Services (Department) included Jared Keilen.

ISSUE

Did the Department properly determine Claimant's MA eligibility?

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 assessed by the Area Agency on Aging and found to be eligible for the MI-Choice waiver program on April 23, 2013.
2. Claimant applied for Medicaid on May 1, 2013 with the Area Agency on Aging.
3. On July 26, 2013 the Department approved MA with a deductible and found Claimant to have excess income for the MI-Choice waiver program.
4. Claimant requested hearing on September 30, 2013 contesting the determination of MA benefits.

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.

Income

Income means a benefit or payment received by an individual which is measured in money. It includes money an individual owns even if **not** paid directly such as income paid to a representative.

Countable Income

Income remaining after applying the policy in the income related items, are called **countable**. This is the amount used to determine eligibility and benefit levels. Count all income that is **not** specifically excluded. BEM 500

Funds cannot be counted as both income and as assets in the same month. Do not include funds entered as income in asset amounts entered in Bridges. BEM 500

Irrevocable Trust

Count as the person's countable asset the value of the countable assets in the trust principal if there is any condition under which the principal could be paid to or on behalf of the person from an irrevocable trust. Real property (land) left to children in equal shares have no estate tax on the transfer of property, count as the person's countable asset the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person. Individuals can keep income made off of property and the money goes to the individual not the trust. Property cannot be taken out of the trust.

Exceptions:

Reduce the countable asset amount by the amount of principal or income actually paid to or on behalf of the person during the month.

Reduce the countable amount for multiple contributors.

A trust may allow use of one portion of the principal, but not another portion. Count only the usable portion.

Do not count the amount if it creates an undue hardship; see BEM 405 BEM 401

Additionally, the issue in dispute is how to treat income from Claimant's Revocable Living Trust. The Department asserts that income used from the revocable trust to pay household bills and groceries is required to be counted as unearned income. The June 27, 2013, memo from the Office of Legal Services cites BEM 401 page 11. This Administrative Law Judge finds nothing on that page of Department policy that supports this contention.

Claimant argues that the money in the revocable trust was counted as an asset and that Department policy specifically says that money cannot be counted as both an asset and income. BEM 500 Claimant further argues that the money going into the trust from Claimant's Social Security and Pension income was counted as income when it went into the revocable trust and therefore should not be counted a second time when it comes out of the revocable trust regardless of what type of expenses that income goes towards.

Department policy concerning how to treat income from a revocable trust is very specific: "Count as the person's countable **asset** the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person." The trust does allow income to be paid on behalf of the Claimant therefore it should be treated as an asset. If Department policy specifically says that income from a revocable trust is to be counted as a countable asset then the Department is precluded from also counting it as income pursuant to BEM 500. In addition, it would be unfair to count the income twice when it goes into the trust and comes out of the trust in the same month.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law finds that the Department

did not act in accordance with Department policy when it denied Claimant's MA Waiver application due to excess income.

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. Reinstate and Reprocess Claimant's MA-Waiver Program application back to the date of application excluding monies paid out of the Revocable Living Trust in the income eligibility determination.
2. Activate MA-Waiver Program benefits back to the date of application if Claimant is otherwise eligible.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/06/2013

Date Mailed: 12/06/2013

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

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

AM/pw

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