

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

IN THE MATTER OF:

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

Reg. No.: 15-008616
Issue No.: 3001, 2001
Case No.: ██████████
Hearing Date: June 25, 2015
County: MACOMB-DISTRICT 20
(WARREN)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator, and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly close the Claimant's Food Assistance (FAP) and Medical Assistance (MA) 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. The Claimant was an ongoing recipient of Food Assistance and Medical Assistance.
2. The Claimant has a checking bank account in Claimant's name only which is designated in trust for his son. The Claimant can access the account and his name only appears on the account and on the checks associated with the account. The Claimant did not intend for his son to have the ability to access the funds in the account.
3. The Department has had collateral contact with the Claimant's bank with his permission which confirmed that the bank account containing \$64,603.10 was not

a legal medical needs trust, is accessible to only the Claimant, and is payable to Claimant's son only in case of the Claimant's death. Exhibit 4.

4. The Department closed the Claimant's FAP and MA which included his G2S (medical spend down) and SLMB benefits due to excess assets. Exhibit 4 and 5.
5. The Department issued a Notice of Case Action on May 19, 2015, effective July 1, 2015 closing the Claimant's FAP case due to the value of his countable assets being higher than allowed for the FAP program. Exhibit 4. The Department issued a Health Care Coverage Determination Notice on May 19, 2015, effective July 1, 2015, closing his MA spend down case and his Medicare Savings Program benefits due to his countable assets exceeding the program asset limit.
6. The Claimant requested a hearing on June 1, 2015 protesting the closure.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Department pursuant a redetermination based upon bank account information provided by the Claimant, determined that the Claimant had two bank accounts, one of which contained \$66,257 causing the Claimant to be over the asset limit for the FAP and MA benefit programs. Exhibits 8 and 1. Claimant also had another bank account held jointly with his son which contained \$1,653.90. The second account was in both the Claimant's and his son's names. Exhibit 2. Only the Claimant's name was associated with the account which had \$66,257 with a designation of ITF (in trust for) Claimant's son.

During the redetermination process, the Claimant confirmed with his caseworker that there were no separate trust documents establishing a trust for his son. The bank account in question did bear the designation ITF (in trust for) Claimant's son. The bank manager, where the checking account was held, advised the Department that the checking account in question was not a legal trust and that the Claimant had full access to the funds during his life and that his son would have access to the account **only** in the event the Claimant should die. Exhibit 1 and 3. BEM 400 allows this verification (telephone contact with financial institution and monthly statement as proper verification) BEM 400, (July 1, 2015), p. 58. The Claimant credibly testified that he did not intend to use the funds himself and intended that the funds be solely used for his son's medical care for an operation he would require due to ongoing medical problems. He did not put his son's name on the account after talking to an attorney so it could not be used by the son in his sole capacity as a joint owner.

In this case it is determined that the bank account established by the Claimant was an available asset of the Claimant, even though he did not intend or want it to be. During his lifetime the Claimant could use the asset, or dispose of it, and thus it was legally available to him. The asset limit for FAP is \$5,000 and the asset limit for Medicare Savings Program is \$7,280 and for G2S is \$2,000. BEM 400, p. 5 and 7. The following terms apply to both FAP and MA definitions of an asset:

Assets mean cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). BEM 400, (July 1, 2015) P.

FIP, SDA, G2U, G2C, RMA, SSI-Related MA Only, and FAP

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.**

Exception: This does **not** apply to trusts. There are special rules about trusts. See **Trusts** in this item for FIP, SDA, and FAP. See BEM 401, MA-TRUST policy.

Assume an asset is available unless evidence shows it is **not** available. BEM 400, p.11

A look at Department policy regarding trust requirements for FAP and MA clearly anticipates that a true trust be established where control is relinquished to another.

A trust is defined under Department policy as follows:

TRUSTS

Any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or certain designated persons. The trust must be valid under state law and manifested by a valid trust instrument or agreement. This includes any legal instrument or devise that is similar to a trust. BPG Glossary (July 1, 2015a) p. 68

- *Related Terms: irrevocable trust, revocable trust, annuity.*

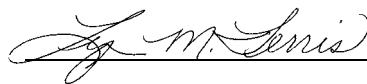
A thorough review of trust policy for both FAP and MA clearly indicate that the bank account is not a trust regardless of the Claimant's intentions. Policy requires that no asset group member (Claimant) has the power to revoke the trust or change the name of the beneficiary of during the benefit period. Here the Claimant could withdraw all the funds at any time or change the names on the account thus requiring a determination that the bank account established by the Claimant is not a trust as it is not irrevocable. BEM 400, p. 26, 28.

The various trusts addressed in BEM 401 with regard to Medical trusts were reviewed and also do not allow or apply to the bank account in question to be characterized as a trust. An asset is countable and the trust principal is available asset when a person is legally able to direct the use of the trust principal for his needs and/or direct that ownership of the principal to revert to himself. See BEM 401, p.17.

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 closed the Claimant's FAP and Medicare Savings benefits and G2S benefits due to his assets exceeding the asset limit.

DECISION AND ORDER

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



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/7/2015**

Date Mailed: **7/7/2015**
LMF / cl

