

**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.: 15-001115
Issue No.: 2001
Case No.: ██████████
Hearing Date: April 2 and 20, 2015
County: Wayne-District 82

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 2, 2015, and continued on April 20, 2015, from Detroit, Michigan. Claimant was represented by ██████████, her attorney and legal guardian (Guardian). Witnesses on behalf of Claimant included ██████████, case manager assistant for Ms. Rowan. Assistant Attorney General ██████████ represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's March 31, 2014, application for Medical Assistance (MA) benefits?

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 is a legally incapacitated individual who resides in a long-term care (LTC) facility.
2. Claimant has been a ward of Guardian since at least 2012 (Exhibit J).
3. On March 31, 2014, Guardian filed with the Department an MA application on Claimant's behalf seeking extended care benefits.

4. In an assets declaration form, DHS-4574, submitted to the Department, Guardian disclosed that Claimant had a checking account with Chase and two annuities with [REDACTED] (Exhibit L).
5. Included with the March 31, 2014, MA application were the following documents:
 - a. Claimant's Chase account statement for the period January 24, 2014, to February 24, 2014, which showed (i) a deposit of \$265.36 in retirement pension on January 31, 2014, (ii) a deposit of \$740 in social security benefits on February 3, 2014, and (iii) an ending balance of \$1319.45 (Exhibit O).
 - b. A handwritten letter signed by Guardian that stated that (i) the annuities were being surrendered upon court approval to pay past nursing home expenses, (ii) [REDACTED] (the company that issued the annuities) required a conservatorship be opened to surrender the policies, and (iii) the cash surrender value of the annuities was less than the amount owed by Claimant to her LTC provider (Exhibit K).
 - c. A statement from Claimant's LTC facility dated March 1, 2014, showing that she owed over \$17,000 to the facility (Exhibit P).
 - d. Statements from [REDACTED] dated June 9, 2012, showing that, as of June 9, 2012, annuity [REDACTED] had a cash surrender value of \$3779.09 and annuity [REDACTED] had a cash surrender value of \$8819.38 (Exhibits Q and R).
 - e. A letter from [REDACTED] to Claimant dated June 11, 2013, advising Claimant that it had received the Letters of Guardianship appointing Guardian but that it interpreted Michigan law to provide that only court-appointed conservators have authority over the protected person's property and finances, including annuities (Exhibit S)
6. On May 12, 2014, the Department sent Claimant a Verification Checklist requesting the current value of the annuities by May 23, 2014.
7. On June 12, 2014, the Department sent Claimant and Guardian a Notice of Case Action denying the application because Guardian had failed to verify the current value of the annuities.
8. On August 19, 2014, Guardian filed a request for hearing disputing the Department's actions.
9. On December 1, 2014, a hearing on the matter was held before Administrative Law Judge (ALJ) Jacquelyn McClinton.

10. In a Hearing Decision issued December 4, 2014, ALJ McClinton concluded that the Department had failed to assist Guardian in obtaining the verifications concerning the value of the [REDACTED] annuities and that, if the Department concludes that additional information cannot be obtained, it must use the best available information, which may be the 2012 documentation concerning the annuities. The ALJ reversed the Department and ordered it to reregister and reprocess the application.
11. On December 9, 2014, the Department sent Claimant a Health Care Coverage Determination Notice indicating that the March 31, 2014, MA application had been reprocessed and denied for excess assets.
12. On December 11, 2014, the Department sent Claimant a Verification Checklist (VCL) requesting by December 22, 2014 verification of the value of the [REDACTED] annuities as of March 2014 and if they were available at that time.
13. On December 22, 2014, Guardian faxed to the Department (i) a petition for protective order dated February 26, 2014, requesting a protective order to liquidate assets to pay nursing home arrears and apply for Medicaid; (ii) "Disposition Regarding Petition for Protective Order-Protective Order" dated May 7, 2014, and signed by the probate judge providing that the petition for protective order was granted to "marshall assets and pay bills;" (iii) Order dated November 10, 2014, signed by the probate judge granting Guardian authority to surrender [REDACTED] Annuities [REDACTED] and [REDACTED] and apply the proceeds to Claimant's outstanding nursing care bills and to apply for Medicaid for Claimant; (iv) copies of cashier's checks dated December 19, 2014, one made payable to [REDACTED] in the amount of \$10,657.97, the other made payable to [REDACTED] in the amount of \$2495.50; (v) a December 8, 2014; letter from [REDACTED] showing annuity [REDACTED] had a value of \$3662.58 as of December 5, 2014 and \$0 thereafter; and (vi) a December 8, 2014, letter from [REDACTED] showing annuity [REDACTED] had a value of \$9490.79 as of December 2, 2014 and \$0 thereafter. (Exhibit 1.)
14. On January 16, 2015, the Department sent Guardian a Health Care Coverage Determination Notice denying Claimant's application on the basis of excess assets. The specialist's comments indicated that the Department reprocessed Claimant's application after offering additional assistance to obtain [REDACTED] verifications but the verifications submitted were for December 2014, not March 2014.
15. On January 24, 2015, Guardian requested a hearing disputing the Department's decision.

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 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.

As a preliminary matter, it is noted that Guardian provided at the initial hearing on April 2, 2015, Letters of Guardianship showing her appointment as Claimant's guardian with an April 5, 2015, expiration date. At the continued hearing on April 20, 2015, Guardian provided Letters of Guardianship showing an April 4, 2016, expiration date. Therefore, Guardian established that she was authorized to represent Claimant concerning her MA issues.

At the hearing, Guardian initially argued that the Department was precluded from reprocessing Claimant's eligibility for MA on the issue of excess assets based on ALJ McClinton's December 4, 2014, Hearing Decision. The Hearing Decision issued by ALJ McClinton concerned the issue of whether the Department had improperly denied Claimant's MA application on the basis that she had failed to verify requested information. In the Decision, ALJ McClinton concluded that the Department had failed to assist Guardian in verifying the value of the annuities and indicated that if no additional information could be obtained, the Department would be required to use the best available information, which might be the 2012 documentation concerning the annuities. ALJ McClinton then reversed the Department's denial of Claimant's MA application on the basis of failure to verify and ordered the Department to reregister and reprocess Claimant's March 31, 2014, application and notify Claimant of its decision. Because ALJ McClinton ordered the Department to reprocess the application and address the asset issue, Guardian's argument that the Department was collaterally estopped or barred by res judicata from determining Claimant's asset eligibility for MA is without merit.

At issue at the hearing was whether Claimant's assets, specifically her two [REDACTED] annuities, exceeded the \$2000 limit for MA eligibility applicable to her case. Claimant, who was unmarried at the time of application, has a one-member asset group for purposes of SSI-related MA, the MA category available to aged, disabled or blind individuals and which includes extended care benefits. The asset limit for SSI-related

MA for an asset group size of one is \$2000. BEM 400 (February 2014), p. 7; BEM 211 (January 2014), p. 4; BEM 105 (January 2014), p. 1; BEM 164 (July 2013), p. 2. 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. At application, MA for future months may not be authorized if the person has excess assets on the processing date. BEM 400, p. 6.

The Department specialist testified that, after ALJ McClinton issued the December 4, 2014, Hearing Decision, she reprocessed Claimant's MA application. She initially denied the application in Health Care Coverage Determination Notice dated December 9, 2014, when, relying on the June 9, 2012, statements from [REDACTED] for annuities [REDACTED] and [REDACTED] showing cash surrender values of \$3779.09 and \$8819.38 respectively (Exhibit Q and R) as the best available evidence of the value of the annuities, she concluded that Claimant had assets in excess of the \$2000 MA asset limit.

The specialist testified that, because ALJ McClinton had also indicated in her Hearing Decision that the Department had failed to assist Claimant and Guardian in obtaining verification of the value of the [REDACTED] annuities, she subsequently sent the December 11, 2014, VCL requesting that verification of the value, as well as whether the annuities were available as of March 2014, and sent copies of the asset verification forms directly to [REDACTED] (Exhibits B and C). The specialist testified that [REDACTED] December 8, 2014, response showed the value of the annuities as of December 2014, not as of the March 2014 application date (Exhibit E). Accordingly, she concluded that Claimant had failed to establish that she did not have excess assets at the time of application and denied the application again in the January 16, 2015, Health Care Coverage Determination Notice for excess assets (Exhibit G).

In this case, Guardian acknowledged from the time she submitted Claimant's MA application on March 31, 2014, that Claimant had two annuities. However, she contended that she was unable to obtain any information concerning the annuities from [REDACTED] and that Claimant, who was legally incapacitated, was unable to access the funds. Accordingly, she argues that the annuities were unavailable at the time of application.

For SSI-related MA, an asset must be available to be countable. BEM 400, p. 8. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 8. The principal in a trust, which legal instrument may include annuities, is considered an available asset of the person who is legally able to direct use of the trust principal for his needs or to direct hat ownership of the principal revert to himself. BEM 401 (October 2013), pp. 1-2, 16.

In this case, Guardian established that Claimant was a legally incapacitated person and that she had served as Claimant's legal guardian since at least 2012 and continued to serve as Claimant's guardian as of the hearing date. While Department policy provides

that an asset remains available during periods in which a guardian or conservator is being sought (BEM 400, pp. 8-9), Claimant was already under guardianship at the time the annuities were assessed at application. A guardian is defined as “a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of any person, who, for defect of age, understanding, or self-control, is considered incapable of administering his affairs.” Bridges Policy Glossary (BPG) (January 2014), p. 28. An incompetent person is “a person who has been adjudicated by a probate court as unable or unfit to manage his own affairs.” BPG, p. 33. The Letters of Guardianship appointing Guardian granted her care, custody and control of Claimant together with all authority and responsibilities granted and imposed by law (Exhibit J). Because Claimant was legally incapacitated and the ward of Guardian, Claimant was incapable of administering her own affairs. As such, the annuity funds were not available to her at the time of application or thereafter.

Guardian also established that the annuity was not available to her in her capacity as Claimant’s guardian. ██████ notified Claimant in June 2013 that it would not release any funds in the annuities to Guardian because Guardian was not a conservator over Claimant’s property and finances, which included the annuity (Exhibit S). At the time of Claimant’s March 31, 2014, MA application, Guardian notified the Department that a petition had been filed with the court to have the annuities surrendered to pay Claimant’s nursing home arrearage (Exhibit K).

In the December 11, 2014, VCL in response to ALJ McClinton’s December 4, 2014, Hearing Decision, the Department asked that Claimant verify the value of the annuities in March 2014 and if they were available at that time. In response to the VCL, Guardian submitted a Petition for Protective Order to liquidate assets to pay Claimant’s nursing home arrearage and apply for Medicaid; a Disposition Regarding Petition for Protective Order dated May 7, 2014 and signed by the probate court ordering the issuance of the protective order to “marshall assets and pay bills;” and an Order dated November 10, 2014, by the probate court ordering that the petition for protective order was granted authorizing Guardian to surrender the ██████ annuities at issue and apply the proceeds to pay outstanding bills to ██████ and ██████ (Exhibit 1, pp. 4-7). Guardian’s assistant testified that she was in constant contact with ██████ to have the annuity funds released and ██████ would not agree to do so until after it received the November 10, 2014, Order. Guardian provided two letters from ██████ showing that a total of \$13,153.47 was withdrawn from both annuities by December 5, 2014, leaving a \$0 balance (Exhibit 1, pp. 10-11), and that two cashier’s checks totaling \$13,153.47 were made payable to ██████ and ██████.

Under the evidence presented, Guardian established that the funds in the annuities were not accessible to Claimant or to Guardian in March 2014 and once the funds were released, they were applied, pursuant to the orders of the court, to Claimant’s outstanding nursing home arrearage. Under these facts, the annuities were not available to Claimant or to Guardian on Claimant’s behalf during March 2014, the processing month for Claimant’s MA application or thereafter.

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 denied Claimant's March 31, 2014 MA application for excess assets.

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. Reregister and reprocess Claimant's March 31, 2014, MA application;
2. Provide Claimant with MA coverage she is eligible to receive from the date of application;
3. Notify Claimant and Guardian of its decision in writing.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/7/2015**

Date Mailed: **5/7/2015**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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 48909-8139

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