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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-015063
Issue No.: 2001
Case No.: [redacted]
Hearing Date: October 12, 2015
County: Wayne-District 82

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner'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, an in-person hearing was held on October 12, 2015, from Detroit, Michigan. Attorney [redacted] represented Petitioner. [redacted], Petitioner's daughter, appeared as a witness on Petitioner's behalf. Assistant Attorney General [redacted] represented the Department of Health and Human Services (Department). [redacted], Assistance Payment Supervisor, and [redacted], Eligibility Specialist, appeared as witnesses on the Department's behalf.

ISSUE

Did the Department properly deny Petitioner's May 21, 2015 application for Medical Assistance (MA), with request for retroactive coverage to February 2015, 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. Petitioner is a resident of a long-term care (LTC) facility.

2. On December 17, 2014, a [redacted] annuity owned by Petitioner was surrendered and [redacted] of the proceeds were, at Petitioner's representative's request, remitted to the Internal Revenue Service (IRS) and to the State of Michigan in equal halves (Exhibit 3A-3D).

3. On January 30, 2015, Petitioner applied for MA, and the Department denied the application due to excess assets, asserting that the funds from the surrendered policy were countable assets (Exhibit 7, pp. 10-13, 22-23).

4. In response to a hearing request submitted on Petitioner's behalf, a hearing on the matter was held on May 18, 2015 before Administrative Law Judge (ALJ) Christian Gardocki and a Hearing Decision was issued on May 21, 2015, finding that the [redacted] funds submitted to the IRS and to the State were Petitioner's countable assets and that the Department acted in accordance with Department policy when it denied Petitioner's application due to excess assets (Exhibit 7, pp. 1-5).

5. On May 21, 2015, Petitioner reapplied for MA (Exhibit 1A-1D) with request for retroactive MA coverage to February 2015 (Exhibit 1E-F).

6. On May 22, 2015, Petitioner's federal and state tax returns were filed (Exhibit 5C).

7. On May 22, 2015, the IRS notified Petitioner that he would receive a [redacted] refund via paper check (Exhibit 4C).

8. On May 22, 2015, the State of Michigan notified Petitioner that he would receive a [redacted] refund via paper check (Exhibit 4B).

9. In a letter dated June 11, 2015, the IRS notified Petitioner that it would not process his 2014 tax return until it heard from him (Exhibit 4A).

10. On June 29, 2015, the Department sent Petitioner's counsel a Verification Checklist requesting verification by July 7, 2015 of Petitioner's receipt of the anticipated/estimated income tax refunds (Exhibit 2A-B, 5A).

11. On July 7, 2015, counsel notified the Department that neither the federal nor the State income tax refund had yet been received (Exhibit 5B).

12. On July 10, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice notifying him that he was denied MA because the value of his countable assets was higher than allowed under the program. The comments from the specialist pointed out that the application was denied because of voluntarily withheld funds. (Exhibit 6A-6C.)

13. On July 16, 2015, Petitioner's counsel filed a request for hearing disputing the Department's actions.

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.

At issue in this case is whether the Department properly denied Petitioner's May 21, 2015 MA application due to excess assets. The Department contends that (1) because a previous adverse finding against Petitioner arising from the same set of facts as in the current case was not appealed, Petitioner's current action is barred by the principles of res judicata and collateral estoppel and (2) even if the merits of Petitioner's action are addressed, the Department properly concluded that Petitioner had excess assets and denied his application.

The Department first contends that Petitioner's action is barred because the circumstances in the instant case were previously argued before an administrative law judge and the judge's decision affirming the Department was not appealed. Res judicata bars a subsequent action when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008). Under the doctrine of collateral estoppel, a determination is conclusive between the parties in a subsequent action where (1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) there was mutuality of estoppel. *Id.* In order for collateral estoppel to apply, the issues in the two actions must be identical, not merely similar. *Bd of County Road Comm'rs for Eaton County v Schultz*, 205 Mich App 371, 376-377; 521 NW2d 847 (1994). The doctrines of res judicata and collateral estoppel apply to administrative determinations which are adjudicatory in nature where a method of appeal is provided and where it is clear that it was the legislative intention to make the determination final in the absence of an appeal. *O'Keefe v Dep't of Soc Servs*, 162 Mich App 498, 509; 413 NW2d 32 (1987).

In this case, Petitioner first applied for MA on January 30, 2015, and the Department denied the application due to excess assets on the basis of the [redacted] life insurance proceeds. Petitioner appealed, a hearing was held, and in a Hearing Decision issued May 21, 2015, the presiding administrative law judge concluded that, in the absence of any evidence that Petitioner had any tax debts, the life insurance proceeds remained Petitioner's asset despite a transfer of the proceeds to the federal and state treasuries

(Exhibit 7, pp. 1-5). It was undisputed that Petitioner's counsel did not appeal this decision.

Petitioner subsequently reapplied for MA on May 21, 2015, with a request for retroactive benefits to February 2015, and in a July 10, 2015 Health Care Coverage Determination Notice the Department again denied the application for excess assets on the basis of the proceeds from the [redacted] policy (Exhibit 6A-6C). Petitioner's July 15, 2015 hearing request concerns this denial, which is based on a different application than the application addressed by the administrative law judge in the May 21, 2015 Hearing Decision. Further, a different set of circumstances applies in the instant case. In this case, Petitioner's tax liability to the federal and state governments was finalized during the processing of the May 21, 2015 application. In his May 21, 2015 Hearing Decision, the administrative law judge expressly noted that in the case presented before him there were no tax documents verifying any tax debts (Exhibit 7, p. 3). Therefore, there was a question of fact essential to the judgment in this case that was not litigated in the prior administrative proceeding and could not have been brought at that time. Accordingly, Petitioner's current action is not barred by the doctrines of res judicata or collateral estoppel, and the merits of Petitioner's case are considered.

Medicaid is a federal-state cooperative program established by Title XIX of the Social Security Act of 1965 to assist needy individuals with medical expenses. 42 USC 1396-1396w-5. States are not required to participate in the Medicaid program, but states that do must comply with federal law and regulations in administering the program. *Mackey v Dep't of Human Servs,* 289 Mich App 688, 693; 808 NW2d 484 (2010), citing, in part, *Atkins v Rivera,* 477 US 154, 156-157; 106 S Ct 2456; 91 L Ed 2d 131 (1986). In order to be eligible for SSI-related MA, the MA category available to individuals over age 65, disabled or blind, an unmarried client must have assets valued at $2000 or less. BEM 211 (January 2015), p. 5; BEM 105 (October 2014), p. 1; BEM 164 (October 2014), pp. 1-2; BEM 400 (April 2015), p. 7. 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.

At issue in this case is whether the [redacted] proceeds remitted to the IRS and the State are countable assets in determining Petitioner's MA asset eligibility. In order to be countable, an asset must be available. 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. An asset is assumed to be available unless evidence shows that it is not avialable. BEM 400, p. 9. Cash, including money held by another, is available. BEM 400, p. 14.

In this case, the evidence at the hearing established that on December 17, 2014, Petitioner's representative surrendered Petitioner's [redacted] life insurance policy and remitted [redacted] of the proceeds from the policy in equal halves to the IRS and the State of Michigan to be applied towards Petitioner's 2014 tax indebtedness (Exhibit 3A-

3C). Petitioner's daughter testified that, at the time of the funds were remitted, she believed Petitioner would owe taxes to the federal and State government but she did not know the amount. On May 22, 2015, tax returns were filed on Petitioner's behalf with the IRS and the State, and Petitioner was advised that he would receive a State refund totaling $13,704 and a federal refund totaling [redacted] both via paper check (Exhibits 4B, 4C). This evidence established that, once Petitioner's tax obligations were paid, the [redacted] remitted to the IRS and to the State from the [redacted] policy were funds that legally belonged to Petitioner. Because Petitioner had a legal right to those funds, they were available. The Department contends that, because the funds were available, they were countable.

Petitioner's counsel argues, however, that the funds were tax refunds and, pursuant to policy, are excludable assets. For purposes of SSI-related MA, income tax refunds are assets. BEM 400, p. 15. However, Department policy in effect at the time Petitioner's application was filed in May 2015 provided that, for determining SSI-related MA asset-eligibility, the Department excludes tax refunds, provided that the funds are not commingled with countable assets and not in time deposits. BEM 400 (April 2015), p. 19. At the hearing, the Department argued that the policy applied only for tax refunds that were actually "received" and there was no evidence that Petitioner had received the tax refunds by the time the Health Care Coverage Determination Notice denying Petitioner's application was sent on July 10, 2015. Effective July 1, 2015, Department policy was revised to provide that, for SSI-related MA, "federal income tax refunds are excluded for 12 months from the month of receipt." BEM 400 (July 2015), p. 20. The revised policy includes the language requiring "receipt" and only expressly excludes federal income tax refunds in determining asset-eligibility. This revised language makes Department policy consistent with the Social Security Program Operations Manual System SI 01130.676. However, the policy in effect at the time of Petitioner's application required simply that the Department "exclude tax refunds" that were not commingled with countable assets or in time deposits without any further limitations. Based on the policy in effect at the time of Petitioner's application and the fact that Petitioner established a right to a tax refund as of May 22, 2015, the Department improperly concluded, at least with respect to Petitioner's MA eligibility for May 22, 2015 ongoing, that the [redacted] cash funds held by the IRS and the State was a countable asset if the evidence shows that the funds from the refunds were not commingled with other countable assets and not placed in a time deposit. Therefore, the Department did not act in accordance with Department policy when it concluded, under the circumstances presented in this case, that Petitioner had excess assets for May 1, 2015 ongoing based on the proceeds from the [redacted] policy.

However, because Petitioner did not have a tax refund established prior to May 22, 2015, the funds remitted to the IRS and the State of Michigan continued to be available to Petitioner for the retroactive months, February 2015 to April 2015. There was no exclusion to asset availability, and therefore countability, that applied those months. Therefore, the Department acted in accordance with Department policy when it counted

the funds towards Petitioner's asset eligibility for February 2015 to April 2015 and concluded that Petitioner was not asset eligible for MA during the retroactive months.

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 denied Petitioner's application for retroactive MA benefits for February 2015 to April 2015 but did not act in accordance with Department policy when it denied Petitioner's May 21, 2015 MA application.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to denial of Petitioner's application for retroactive MA benefits **AND REVERSED IN PART** with respect to denial of Petitioner's May 21, 2015 MA application.

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 Petitioner's May 21, 2015 MA application;

2. Reprocess Petitioner's eligibility for MA coverage for May 1, 2015 ongoing;

3. Supplement Petitioner for any MA benefits he was eligible to receive from May 1, 2015 ongoing; and

4. Notify Petitioner and his authorized representative of its decision.

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

Date Signed: **10/30/2015**

Date Mailed: **10/30/2015**

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]