

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

**IN THE MATTER OF:**

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

Reg. No.: 15-004544  
Issue No.: 2001  
Case No.: ██████████  
Hearing Date: May 07, 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 4-way telephone hearing was held on May 7, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████, Claimant's brother and agent (Agent) pursuant to Durable Unlimited Power of Attorney dated August 4, 2011, and ██████████, Claimant's nephew. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Family Independence Manager, and ██████████, Assistance Payment Worker.

**ISSUE**

Did the Department properly close Claimant's Medical Assistance (MA) case?

**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 an ongoing recipient of MA benefits residing in a long-term care (LTC) facility.
2. In connection with a redetermination, the Department concluded that Claimant had assets valued at more than \$2000.
3. On January 12, 2015, the Department sent Claimant a Notice of Case Action notifying her that her MA case was closing effective February 1, 2015, because the value of her countable assets was higher than allowed for the program.

4. On March 19, 2015, Agent 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.

As a preliminary matter, it is noted that Agent established his authority to request a hearing on behalf of Claimant, and to represent Claimant at the hearing, pursuant to the Durable Unlimited Power of Attorney she signed August 4, 2011. Agent also revoked any authority he had granted to Claimant's nursing home and the home's representative to represent Claimant.

In a Health Care Coverage Determination Notice dated January 12, 2015, the Department notified Claimant that her MA case was closing effective February 1, 2015, because the value of her assets exceeded the asset limit. Although the Department's hearing summary referenced a real estate transaction and possible divestment penalties that could subsequently apply to Claimant's future receipt of long term care benefits, because the Department action at issue was the closure of Claimant's MA case based on excess assets, the hearing was limited to this issue. See Mich Admin Code, R. 792.11002(1).

Asset eligibility is required for MA coverage under SSI-related MA categories, which are categories providing MA coverage to individuals who are aged, disabled or blind. BEM 400 (January 2015), p. 1; BEM 105 (October 2014), p. 1. For SSI-related MA, the asset limit is \$2000 for an individual in long-term care. BEM 400, p. 7; BEM 211 (January 2015), p. 5. At the hearing, the Department testified that it concluded that the value of Claimant's assets exceeded the applicable MA limit based on the value of her checking account, a patient trust account, and the cash surrender value of her life insurance.

Checking and savings accounts are assets. BEM 400, p. 14. The value of an account is the amount of cash in the account. BEM 400, p. 16. Department policy provides that

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. 4.

In this case, Agent provided a checking account statement for Claimant's [REDACTED] checking account covering the period between October 7, 2014, and November 18, 2014. The Department testified that, in determining Claimant's asset eligibility, it considered the lowest balance during that period, which was \$3252.95, and reduced it by the \$90 veteran's benefits deposited into her account that month. See BEM 400, p. 20 (excluding current income from the calculation of asset value of a banking account). This reduces Claimant's checking account value to \$3162.95.

Agent explained at the hearing that the funds in Claimant's accounts were used to pay Claimant's LTC facility but, because of a billing error by the facility, the facility had failed to cash several months' remittances, resulting in excess funds in the account. Agent noted that Claimant continued to remain liable for the facility expenses and, when the facility realized its error, the funds in the checking account were quickly depleted to less than \$2000. Notwithstanding events outside Claimant's control, because the value of the funds in Claimant's [REDACTED] account exceeded the \$2000 asset limit for the period at issue, the Department acted in accordance with Department policy when it closed Claimant's MA case for excess assets.

At the hearing, Agent and his witness also contended that Claimant's life insurance policy was an excluded, non-countable asset because it was intended to fund Claimant's burial expenses. It is noted that there is a burial fund exclusion for assets that comply with the terms of BEM 400, pp. 44-47, and an exclusion for life insurance funded funeral plans that comply with the terms of BEM 400, pp. 50-52. However, because the value of Claimant's checking account alone is sufficient to establish excess assets, it is unnecessary in this case to address the issue of the value of the life insurance policy and whether it is an excluded asset.

#### **DECISION AND ORDER**

The Department's decision to close Claimant's MA case is **AFFIRMED**.



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

Date Signed: **5/13/2015**

Date Mailed: **5/13/2015**

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:

| Administration          | Percentage of respondents |
|-------------------------|---------------------------|
| Current administration  | 100%                      |
| Previous administration | 0%                        |