

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

IN THE MATTER OF:

██████████
████████████████████
██

Reg. No.: 15-005995
Issue No.: 2007
Case No.: ██████████
Hearing Date: June 11, 2015
County: ALLEGAN

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 11, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Attorney ██████████. Participants on behalf of the Department of Health and Human Services (Department) included Long Term Care Worker ██████████ and Assistant Attorney General ██████████.

ISSUE

Did the Department properly deny Claimant's December 31, 2014 Long Term Care Medical Assistance application?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On December 31, 2014, a Long Term Care Medical Assistance application and retroactive application were submitted for Claimant.
2. On February 23, 2015, Claimant was sent a Health Care Coverage Determination Notice (DHS-1606) which stated his application was denied due to excess assets.
3. On April 16, 2015, a hearing request was submitted.

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.

In this case the Department denied Claimant's application based on the value of his homestead in Kentucky. Claimant owns two properties, one in Michigan and one in Kentucky. Claimant asserts that policy allows him to choose which of the two homesteads will be excluded. The property in Michigan is a non-salable asset and will have no countable value as an asset. Claimant asserts he can choose the Kentucky property as his homestead to be excluded so he does not have excess assets. The Department asserts that Claimant cannot choose the Kentucky property as a homestead to be excluded. The parties agree that this policy dispute is the only issue to be resolved by this hearing.

Bridges Administration Manual (BAM) 400 Assets (10-1-2014) states:

HOMES AND REAL PROPERTY EXCLUSIONS

Homestead Definition and Exclusion

SSI-Related MA Only and FAP

A homestead is where a person lives (unless **Absent from Home-stead**, see below) that they own, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

SSI-Related MA Only and FAP

Exclude only one homestead for an asset group. If a migrant claims two homesteads, exclude the homestead of the migrant's choice.

See below about exempting a homestead when the owner is **Absent from Homestead**.

**Absent from Homestead
SSI-Related MA Only**

Exclude a homestead that an owner formerly lived in if **any** of the following are true:

- The owner intends to return to the homestead.
- The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.

- A co-owner of the homestead uses the property as his home.

The Department asserts that Claimant was living in the Michigan homestead when he entered the long term care facility. The Department asserts that because the Glossary defines homestead as “where a person usually lives” Claimant’s homestead is the one in Michigan and he cannot choose the Kentucky property as a homestead to be exempted.

The purpose of the Department’s argument is clear but the reasoning is not. The Department asserts that the Michigan property is his homestead because he was living there when he went into long term care. It is not clear if the Department is arguing that the Kentucky property is not a homestead or that Claimant has two homesteads but cannot choose between them.

Department policy does not contain any provisions that prevent a person from having two homesteads. In fact it specifically addresses migrant workers who might have two homesteads. The policy also addresses circumstances when a person is absent from the homestead and allows exclusion of a homestead that an owner formerly lived in. Department policy contains no known limiting criteria on being “absent from the homestead”.

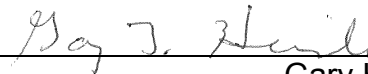
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that Department acted in accordance with policy when it denied Claimant’s December 31, 2014 Long Term Care Medical Assistance application.

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 Claimant's December 31, 2014 Long Term Care Medical Assistance application and process in accordance with Department policy.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/1/2015**

Date Mailed: **7/1/2015**

GFH / 

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:

