

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-009688
Issue No.: 2001
Agency Case No.: [REDACTED]
Hearing Date: October 13, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 October 13, 2015, from Lansing, Michigan. The Claimant was represented by her attorney, [REDACTED]. The Department was represented by Assistant Attorney General, [REDACTED]; Eligibility Specialist, [REDACTED] and Assistance Payments Supervisor, [REDACTED].

ISSUE

Did the Department properly take action to deny the Claimant's application for Medical Assistance (MA) based on the Claimant being over the asset limit?

FINDINGS OF FACT

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

1. A March 3, 2015, Decision and Order issued by the undersigned ordered the Department to redetermine the Claimant for MA.
2. The Department's MA budget in evidence indicates that the Claimant had liquid assets of [REDACTED] as well as life insurance assets of [REDACTED].
3. On March 25, 2015, the Department sent the Claimant a DHS 176, Benefit Notice informing the Claimant that she was not eligible for MA benefits for the December, 2012 application.
4. On June 1, 2015, the Department received the Claimant's attorney's written request for hearing protesting the Department's determination.

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.

Additionally, Bridges Eligibility Manual (BEM) 400 (2012) p. 1, provides that assets must be considered in determining eligibility for MA. Assets are defined as cash, any other personal property and real property. To be eligible for MA, countable assets cannot exceed the applicable asset limit, which in this case is \$2000. An asset is countable if it meets the availability tests and is not excluded. Asset eligibility exists when the asset groups are less than, or equal to, the applicable asset limit at least one day during the month being tested. If at application, the person has excess assets on the processing date the Department is not to authorize MA for future months. p. 4.

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. The Department is to assume an asset is available unless evidence shows it is not available. An asset remains available during periods in which a guardian or conservator is being sought. Availability might also be affected by joint ownership. Jointly owned assets are assets that have more than one owner. An asset is unavailable if an owner cannot sell or spend his share of an asset without another owner's consent, and the other owner is not in the asset group and the other owner refuses consent. BEM 400 (2012) pp. 7, 8.

In this case, the Claimant's attorney argued that the Claimant's POA had control of the Claimant's checking account and did indeed write all of the checks from the account. The Department testified that the Claimant's lack of control over the funds would not make them unavailable because the POA is not so much a joint owner as she is overseeing the account. The Department testified the POA's control of the account does not impact the Claimant's eligibility, because the funds were still available to the Claimant.

Black's Law Dictionary defines Power of Attorney as an instrument authorizing another to act as one's agent or attorney. As such, this Administrative Law Judge is not persuaded that the Claimant's checking account is jointly owned with her POA.

Therefore, the Administrative Law Judge concludes that the funds in the checking account continued to be available to the Claimant. This conclusion is further supported by the fact that there is no evidence to indicate that the funds are not available to the Claimant nor is there evidence to indicate that the Department had knowledge that the Claimant could not access her own account.

During the hearing it was not contested that the Claimant's life insurance policy paid for her nursing home expense and that the policy was not surrendered until May 20, 2013. Therefore, the life insurance funds were available up until that time. As such, this Administrative Law Judge concludes that the Department has met its burden of proving that it properly counted both the liquid and life insurance assets.

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 took action to deny the Claimant's MA application due to excess assets.

DECISION AND ORDER

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



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **10/27/2015**

SEH/sw

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:

