

**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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MAHS Reg. No.: 15-023265
Issue No.: 2001; 3001
Agency Case No.: ██████████
Hearing Date: February 08, 2016
County: Oakland-District 2
(Madison Hts)

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 February 8, 2015, from Madison Heights, Michigan. Petitioner appeared and represented himself. The Department was represented by ██████████, Eligibility Specialist, and ██████████, Assistance Payment Supervisor.

ISSUE

Did the Department properly close Petitioner's Medicaid (MA) and Food Assistance Program (FAP) cases due to failure to verify requested information?

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 was an ongoing recipient of FAP benefits and MA coverage through the Healthy Michigan Program (HMP).
2. In connection with a redetermination, Petitioner advised the Department that he would be receiving an inheritance following his parents' death and that he was receiving \$2,000 monthly from his sister.
3. On November 3, 2015, the Department sent Petitioner a Verification Checklist (VCL) requesting, among other things, proof of a donation or contribution from an individual outside the group by November 13, 2015 (Exhibit A, pp. 39-40).

4. On November 4, 2015, the Department sent two additional VCLs requesting verification of the inheritance amount, date received, and date transferred/forwarded/deposited to other asset types by November 16, 2015 (Exhibit A, pp. 35-38).
5. On November 24, 2015, Petitioner sent the Department an email explaining that his sister would not write a statement on his behalf and that she was in total control of their late father's funds (Exhibit A, p. 20).
6. On November 30, 2015, the Department asked Petitioner for his sister's contact information so that it could work directly with her to obtain requested verifications and a copy of his late father's will to confirm that the sister was entirely in charge of funds (Exhibit A, p. 14).
7. On November 30, 2015, Petitioner sent the Department an email explaining that his sister would not cooperate with the Department and including a [REDACTED] statement showing the following deposits to his account that he described as "gifts" from his sister: \$2,000 on August 31, 2015; \$1000 on September 16, 2015; \$2,000 on October 5, 2015; \$2,000 on November 2, 2015; and \$2,000 on November 23, 2015 (Exhibit A, pp. 16-18).
8. On December 1, 2015, the Department sent Petitioner a Notice of Case Action notifying him that his case closed effective December 1, 2015 because he had failed to verify his employment and self-employment income. The comments from the specialist stated that employment and self-employment income was provided but that verification of monthly payments and inheritance were not received. (Exhibit A, pp. 4-7.)
9. On December 1, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice notifying him that his MA case was closing effective January 1, 2016 because he was not under 21 or over 65, pregnant, the caretaker of a minor child, blind or disabled and because his \$24,000 in yearly income exceeded the limit for eligibility. The comments from the specialist advised Petitioner that the \$2000 monthly donation from his sister was unearned income that made him ineligible for MA. (Exhibit A, pp. 8-10).
10. On December 8, 2015, the Department received Petitioner's request for hearing disputing the Department's actions closing his FAP and MA cases.

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), Department of Health and Human Services Medicaid Provider

Manual (MPM), Department of Community Health Modified Adjusted Gross Income Related Eligibility Manual (MREM), and Department of Health and Human Services Emergency Relief Manual (ERM).

In connection with his redetermination, Petitioner reported an inheritance following his father's death and monthly "gifts" from his sister. The Department requested verification of both the inheritance and monthly donations to determine Petitioner's ongoing MA and FAP eligibility.

FAP Case Closure

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011.

Although the December 1, 2015 Notice of Case Action closing Petitioner's FAP case indicated that Petitioner failed to verify employment and self-employment income, at the hearing the Department pointed out that the specialist's comments in the Notice clarified that the FAP case closed because of failure to verify the inheritance and donation amount. The Department confirmed at the hearing that the closure was due to failure to verify the inheritance and the sister's donations.

To be eligible for FAP, a client may not have assets with a value in excess of \$5,000. BEM 400 (October 2015), p. 5. An asset must be available to be countable. 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 the evidence shows that it is not available. BEM 400, p. 9.

In this case, there is email correspondence wherein the Department worker indicates that she was advised by Petitioner that he anticipated receiving a lump-sum payment following his father's death and had set up an annuity to receive the payment (Exhibit A, pp. 80, 102). By indicating that he was a recipient of an "inheritance," Petitioner suggested that he was receiving an asset. Therefore, the Department acted in accordance with Department policy when it requested verification of the inheritance. Petitioner argued that he could not verify the value of this asset because his sister, with whom he has a strained relationship, would not give him any information. Because Petitioner has a legal right to what he characterizes as his inheritance, he cannot use his sister's unwillingness to provide him with information to establish that the asset is unavailable. Further, it is noted that, as a beneficiary/potential beneficiary of his father's estate, he is by law entitled to an accounting that details what he is to receive. MCL 700.3703(4); MCL 700.7814.

Based on Petitioner's testimony at the hearing that he was receiving monthly payments from his sister in her capacity as executor of their father's estate, it appears that he may be the beneficiary of a trust. The trust principal and any income retained by the trust are considered unavailable if **all** the following conditions apply: (i) the trust arrangement is **not** likely to end during the benefit period; (ii) no asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period; (iii) the trustee administering the trust is either a court or an institution, corporation or organization **not** under the direction of ownership of any asset group member **or** an individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary; (iv) investments made on behalf of the trust do **not** directly involve or benefit any business or corporation under the control or direction of an asset group member; (v) the funds in the irrevocable trust are one of the following: established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary or established from funds of a person who is **not** a member of the asset group. BEM 400, pp. 26-27.

In this case, however, Petitioner did not characterize the inheritance with reference to a trust and never provided any trust documentation to the Department. BEM 400, pp. 27-28, 61. Therefore, the Department did not err in the manner of processing the VCL in this case.

The Department also requested verification of funds given to Petitioner by his sister. Countable earned and unearned income must be verified and budgeted in determining a client's FAP eligibility and amount. BEM 550 (October 2015), pp. 1, BEM 500 (July 2015), p. 3. Petitioner characterized the funds he received from his sister as a "gift" but the evidence also suggests that it may be payments from a trust. A donation to an individual by family outside the FAP group is the individual's unearned income. BEM 503 (October 2015), p. 10. Likewise, payments from a trust to a beneficiary count as the beneficiary's unearned income. BEM 503 (October 2014), p. 34. Therefore, the Department acted in accordance with Department policy when it requested verification of the funds Petitioner received from his sister.

Petitioner argued that his sister would not provide a statement concerning her donations. Department policy provides that assistance may not be denied solely on a source's refusal to verify income. BEM 503, p. 39. However, when documentation is not available or when available evidence needs clarification, the Department may ask a client to name a suitable collateral contact, a person which the Department will directly contact to verify information from the client. BAM 130 (July 2015), p. 2.

In this case, the Department requested that Petitioner provide his sister's contact information so that the Department could attempt to contact the sister directly, but Petitioner refused to provide this information. Because Petitioner did not cooperate in providing the requested information, Petitioner cannot use his sister's unwillingness to provide a statement to him to establish that the information was unavailable.

Because Petitioner failed to verify the nature and/or amount of this inheritance or funds received from his sister, the Department acted in accordance with Department policy in closing Petitioner's FAP case for failure to verify an asset and income.

MA Case Closure

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.

The Department testified that it closed Petitioner's MA case because he no longer satisfied the income limit for HMP eligibility. An individual is eligible for HMP if his household's income does not exceed 133% of the federal poverty level (FPL) applicable to the individual's group size under the Modified Adjusted Gross Income (MAGI) methodology. Because Petitioner was the sole member of his household and there was no evidence that he had any tax dependents, for MAGI purposes, he has a household size of one. MREM, § 5.2. 133% of the annual FPL in 2015 for a household with one member is \$15,654.10. <http://aspe.hhs.gov/POVERTY/15poverty.cfm>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$15,654.10.

In this case, Petitioner advised the Department in his redetermination interview that he was receiving \$2,000 monthly from his sister. Based on his statement, Petitioner would receive \$24,000 annually from his sister. See BAM 130, p. 1 (providing that verifications are unnecessary when a client is clearly ineligible). Because Petitioner's projected annual income based on his statement exceeds the income eligibility for HMP, the Department acted in accordance with Department policy when it closed Petitioner's HMP case. It is further noted that the bank statement Petitioner provided to the Department in a November 24, 2015 email (Exhibit A, p. 18) showed that, between August 31, 2015 and November 23, 2015, \$9000 was deposited into Petitioner's account, or an average of \$2,250 monthly, which is more than the \$2000 the Department applied in determining HMP eligibility and further supports the Department's position that Petitioner was not income eligible for HMP.

Before closing a client's MA case due to ineligibility, Department policy provides that the Department must conduct an ex parte review unless the client was ineligible for any MA coverage. BAM 220 (October 2015), p. 17; BAM 210 (October 2015), p. 1. A client is entitled to the most beneficial MA category, which is the category which results in eligibility or the least amount of excess income. BEM 105 (October 2014), p. 2. When the ex parte review shows that an MA recipient is eligible for MA under another category, the Department must change the coverage. BAM 220, p. 17. When the ex parte review shows that a recipient may have continuing eligibility under another MA

category but there is not enough information in the case record to determine continued eligibility, the Department must send a verification checklist to proceed with the ex parte review. BAM 220, pp. 17-18.

In this case, Petitioner argued that he was disabled. However, the Department contended that it was not aware of any alleged disability prior to sending the notice of the case closure. Petitioner acknowledged that he had not notified the Department of his disability until after he received the December 1, 2015 Health Care Coverage Determination Notice notifying him that his MA case was closing and indicating he was not disabled. Because the Department was not put on notice that Petitioner was alleging a disability at the time it assessed his HMP eligibility, the Department properly concluded that Petitioner was not eligible for any other MA category and closed his MA case. It is noted that eligibility for disability-based MA would require that Petitioner establish asset-eligibility for MA. See BEM 400, pp. 6-7. Therefore, Petitioner's failure to verify his inheritance as discussed above would preclude his eligibility for disability-based MA.

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 closed Petitioner's MA and FAP cases.

DECISION AND ORDER

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



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

Date Signed: **2/17/2016**

Date Mailed: **2/17/2016**

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).

