

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

IN THE MATTER OF:

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

MAHS Reg. No.: 15-020229
Issue No.: 2001
Agency Case No.: ██████████
Hearing Date: January 21, 2016
County: Wayne-District 15

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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, a three way telephone hearing was held on January 21, 2016, from Detroit, Michigan. Petitioner appeared for the hearing with her husband, ██████████ and was represented by ██████████, Authorized Hearing Representative (AHR) from ██████████. ██████████. The Department was represented by ██████████, Case Worker.

ISSUE

Did the Department properly determine that Petitioner's husband was ineligible for Medical Assistance (MA) coverage for the month of April 2014 on the basis that the value of his assets exceeded the limit for MA purposes?

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 or around July 31, 2014, ██████████ submitted an application for MA benefits, retroactive to April 2014 on behalf of Petitioner's husband, ██████████.
2. On August 24, 2015, the Department sent ██████████ a Health Care Coverage Determination advising of its decision to deny Petitioner's husband MA coverage for the month of April 2014. The Notice further states that monthly income of \$3500 exceeds the limit for HMP (\$3148.78) and PCR (\$1278.45) and that assets in the month of April 2014 exceeded the limit for the Group 2 Caretaker (G2C) MA program (Balance ██████████, low balance ██████████). (Exhibit A)

3. Petitioner's husband was approved for MA benefits for the period of May 2014 ongoing.
4. On October 29, 2015, [REDACTED] submitted a hearing request on behalf of Petitioner's husband disputing the denial of MA coverage for April 2014 based on excess assets.

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, assets must be considered when determining eligibility for MA under the G2C program. BEM 400 (February 2014), pp. 1, 5. The Department will consider the following types of assets to determine eligibility for G2C MA: cash (which includes savings and checking accounts); investments (which includes 401(k), Roth IRA etc.); retirement plans; and trusts. BEM 400, pp. 1, 13-14. Asset eligibility will exist 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. For the G2C MA program (the type of MA for which Petitioner's husband is alleging eligibility), the asset limit is \$3000. BEM 400, p. 6.

With respect to the value of a client's countable cash assets, Department policy sets forth various exclusions which are not to be counted as cash assets. BEM 400, pp. 16-22. The current income exclusion provides that the Department is to exclude funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 20.

In the present case, the Department testified that Petitioner's husband was ineligible for MA under the G2C program for the month of April 2014 because the value of his assets was in excess of the \$3000 asset limit. The Department did not provide an MA Asset Budget to show exactly which assets were considered and in what amounts, however.

The Department testified that it relied on the information contained in bank statements from a checking account held at ██████ Bank. (Exhibit B). The Department stated that based on the information contained in the bank statements, Petitioner's checking account had an ending balance of ██████ on April 7, 2014, and an ending balance of \$█████ on May 7, 2014, which the Department determined was the lowest balance for the month being tested. (Exhibit B). The bank statements relied on by the Department however, are incomplete and do not contain all of the pages, thus it was unverified that the lowest balance for the April 2014 month at issue was ██████.

Petitioner's AHR asserted that the Department was incorrect in its determination that Petitioner's group had excess assets for the month of April 2014. (Exhibit B). Petitioner's AHR maintained that Petitioner's husband had income of ██████ that was directly deposited to the checking account in the month of April 2014, the amount of which should be excluded from the asset calculation in accordance with the current income exclusion policy referenced above. BEM 400, p. 20. Petitioner's AHR reviewed the bank statements and highlighted the income deposits he alleges were made during the statement period. (Exhibit B). The Department representative present for the hearing stated that she was not the case worker who took the action on this case, but she assumes that the worker counted the income deposited towards the asset eligibility determination. Although Petitioner's AHR stated that even after subtracting the income from the asset calculation Petitioner's husband may still have excess assets, the Department failed to present sufficient evidence to establish that it properly excluded Petitioner's income from the calculation of his asset eligibility for MA under the G2C program. Thus, the Department's determination that Petitioner had countable assets with the lowest balance being ██████ was improper.

Petitioner's AHR further asserted that on March 26, 2014, a ██████ deposit was made to Petitioner's bank account which consisted of a federal tax refund, the amount of which should be excluded from the calculation of Petitioner's husband's MA asset eligibility. Petitioner and her AHR did not present any documentary evidence to support Petitioner's testimony that the ██████ deposit was in fact a federal income tax return, however.

Petitioner's AHR noted a change in Department policy with respect to the 12 month exclusion of federal tax refunds from the calculation of asset eligibility for G2C MA benefits. The Department policy in effect at the time Petitioner's application was filed in July 2014 and during the month at issue of April 2014 provided that for determining G2C related MA asset eligibility, the Department is to exclude tax refunds, provided that the funds are not commingled with countable assets and not in time deposits. BEM 400 (February 2014 and July 2014), p. 19. Petitioner's AHR stated that the policy was revised in July 2015 to indicate that for G2C related MA asset eligibility, federal income tax refunds are excluded for 12 months from the month of receipt. The refund amount is subtracted from the household's total assets to determine if they meet the asset limit. BEM 400 (July 2015), p. 20. Petitioner's AHR maintained that the July 2015 revised

language of BEM 400 makes Department policy consistent with 26 USC 6409 which he stated has been in effect since 2010. (Exhibit 1).

Specifically, 26 USC 6409 Refunds Disregarded in the Administration of Federal programs and Federally Assisted Programs provides as follows:

Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

26 USC 6409. (Exhibit 1). Petitioner's AHR argued that while the federal tax refund cash asset exclusion he relies upon was not included within the Department's policy manuals until July 2015, he has discussed the conflicting information with a representative from the Department and requested policy clarification regarding whether or not the Department would be applying the policy retroactively in order to comply with 26 USC 6409. The Department representative present for the hearing did not have any response to Petitioner's AHR's assertion that the federal tax return shall be excluded from the asset calculation for 12 months and did not have any knowledge of the Department's position concerning the conflicting 26 USC 6409 provision and the BEM 400 Department policy in effect for the month at issue.

Notwithstanding the Department's lack of information regarding the effective date of the policy with respect to the asset exclusion for federal tax returns, there was insufficient evidence to establish that the deposit in question was in fact a federal tax return. There was no evidence presented that verification of the federal tax return was requested by the Department or submitted by Petitioner in accordance with BAM 130. BAM 130 (July 2014). Therefore, because as of the hearing date it remained unverified through sufficient documentary evidence that the [REDACTED] deposit was a federal tax return as alleged, the issue concerning whether the Department should have excluded the deposit in its asset determination will not be addressed.

Thus, based on the above discussion, in reprocessing Petitioner's MA eligibility for April 2014, the Department shall request that Petitioner submit verification that the deposits in question were Petitioner's income from employment and that the [REDACTED] deposit was a federal tax return, at which point the Department shall make a new asset assessment using the information provided by Petitioner.

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 did not act in accordance with Department policy when it determined that Petitioner was

ineligible for MA coverage for the month of April 2014 on the basis that his assets exceeded the limit for MA purposes.

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 Petitioner's April 2014, Retroactive MA application;
2. Reprocess Petitioner's eligibility for MA coverage for April 2014;
3. Supplement Petitioner for any MA benefits he was eligible to receive from April 1, 2014, ongoing; and
4. Notify Petitioner and his authorized representative of its decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **2/18/2016**

Date Mailed: **2/18/2016**

ZB / 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]