



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: November 14, 2016  
MAHS Docket No.: 16-013059  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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 October 12, 2016, at the Isabella County office in Mt. Pleasant, Michigan. Petitioner was represented by his attorney [REDACTED]. The Department was represented by Assistant Attorney General [REDACTED]. Assistance Payments Worker [REDACTED] and Assistance Payments Supervisor [REDACTED] appeared as witnesses for the Department. Department's Exhibit A, pages 1-207 was admitted into evidence. Pages 143-207 are the hearing request and exhibits submitted to the Department by Petitioner.

### **ISSUE**

Did the Department properly deny Petitioner's June 30, 2016 application for Long Term Care (LTC)?

### **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 June 30, 2016, an application for Long Term Care (LTC) was submitted on Petitioner's behalf.
2. On July 15, 2016, a copy of the [REDACTED] Irrevocable Trust Agreement (Department Exhibit A pages 9-36) was sent to the Department's Trust and Annuities Unit for evaluation.

3. On July 28, 2016, Trust and Annuities Unit issued an evaluation of the [REDACTED] Irrevocable Trust Agreement. (Department Exhibit A pages 38 & 39) The evaluation states that any payments from the trust to Petitioner are countable as unearned income for determining his eligibility. The evaluation also states that "If the homestead has been transferred to the trust, it is no longer exempt and must be counted as an asset of the trust."
4. On July 28, 2016, Petitioner was sent a Health Care Coverage Determination Notice (DHHS-1606) which stated he was not eligible because the value of his assets was higher than allowed for the program.
5. On September 16, 2016, Attorney [REDACTED] submitted this hearing request.
6. On October 12, 2016, the parties stipulated that the principle in the [REDACTED] Irrevocable Trust Agreement exceeds the \$ [REDACTED] asset limit for Petitioner's Long Term Care (LTC) eligibility. In accordance with R792.101116 the stipulation was made by a statement entered into the record.

### **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.

### **Department's denial of the application**

The evaluation of the [REDACTED] Irrevocable Trust Agreement was based on section 1.1 Parties and section 5.2 Principle Distribution. Section 1.1 states:

Parties. This Trust Agreement is made by [REDACTED] and [REDACTED]. Both of [REDACTED], herein called the "Settlers" and their successors, herein called "Trustee" or "Trustees." In this Agreement the Trustees, when referred to in their fiduciary capacity (if any) and each named, alternate or successor trustee, are referred to as "Trustee" or "Trustees" accordingly.

Section 5.2 Principle Distribution states in part:

The Trustees shall hold, manage, invest and reinvest the trust estate, and pay over or apply the net principle to or for the benefit of at times or from time to time, to such an extent and in such amounts and proportions and at such times as the Trustees, in their sole and absolute discretion, shall determine with wide authority and discretion in the Trustees to pay out such amounts of principle from the trust as are necessary for the health, education, maintenance or support of without requiring the mandatory equality of distribution, so that the varying needs of the various beneficiaries can be recognized and met.

The evaluation determined that these sections show conditions under which the principle and/or income could be paid to or on behalf of Petitioner from the trust. Bridges Eligibility Manual (BEM) 401Trusts – MA, at page 11 under Irrevocable Trust, provides:

Count as the person's countable asset the value of the countable assets in the trust principal if there is any condition under which the principal could be paid to or on behalf of the person from an irrevocable trust.

The Isabella County office determined that the [REDACTED] Irrevocable Trust Agreement contained assets valued at \$ [REDACTED]. Based on the trust evaluation, Petitioner's Long Term Care (LTC) application was denied due to having assets in excess of the \$ [REDACTED] asset limit.

#### **Additional provisions of the [REDACTED] Irrevocable Trust Agreement**

Article 9 of the [REDACTED] Irrevocable Trust Agreement provides:

1. The Trustees may designate and appoint a Special Co-Trustee who is independent within the meaning set forth in Code Section 672(c). The Special Co-Trustee must be independent and may not be related to, or be subordinate to, any member of the Settlor's family or the family of any direct or indirect beneficiary. Any person who provides professional services to any one or more members of a Settlor's family is not a prohibited person to serve as Special Co-Trustee.
  - a. Trustees of this Trust in agreement may appoint a Special Co-Trustee in a writing with signature at any time and may remove a Special Co-Trustee at any time by writing with signature. Removal of Special Co-Trustee will be considered completed upon receipt of the signed writing.
  - b. There may be only one Special Co-Trustee appointed at any time.
2. Omitted as not relevant.
3. The Special Co-Trustee has the authority to make distributions, either of principle or income from the [REDACTED] Trust to any Settlor, Trustee or Beneficiary of this trust.

This section of the [REDACTED] Irrevocable Trust Agreement clearly provides conditions under which the principle and/or income could be paid to or on behalf of Petitioner from the trust. Based on the [REDACTED] Irrevocable Trust Agreement as a whole, the value of the assets in the trust are properly used to determine Petitioner's eligibility for Long Term Care (LTC).

### **Petitioner's argument**

Petitioner's representative argues that section 5.2 of the [REDACTED] Irrevocable Trust Agreement DOES NOT provide a condition under which the principle could be paid to Petitioner. The argument relies on the last sentence in section 5.2 which states "At no time shall the trustees distribute any principle of this trust to the Settlers, the Settlers' estate or creditors of the Settlers or the Settlers' creditors estates."

Petitioner's representative further argues that Article 9 of the trust cannot be used as the basis of denying the application because the July 28, 2016 Health Care Coverage Determination Notice (DHHS-1606) issued by the Department denying the application was based solely on article 5 of the trust. Petitioner's representative asserts that the July 28, 2016 Health Care Coverage Determination Notice (DHHS-1606) is insufficient notice and should be reversed.

The Health Care Coverage Determination Notice (DHHS-1606) sent to Petitioner on July 28, 2016 states:

06/01/2016 – Ongoing – [REDACTED] is not Eligible  
-The value of your countable assets is higher than allowed for this program.

There can be insufficient eligibility determination notices which should be reversed. One example would be a notice which states an application is denied for failure to provide required verifications of income within the required time limit. If the verifications were received and the actual reason for denying the application is excess income, the notice is insufficient and should be reversed. The notice in this example is insufficient because the notice restricts the applicant to request a hearing on the issue of whether or not the required verifications of income were submitted within the time limit. Unless another eligibility determination notice is issued stating the application is denied due to excess income, there is no jurisdiction for the applicant to get a hearing on the actual denial reason of the application.

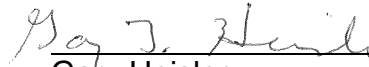
The technicality being promoted does not exist in this case. The notice sent to Petitioner specifies that his eligibility status was based on having excess assets. Petitioner requested and obtained a hearing on that issue.

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 denied Petitioner's June 30, 2016 application for Long Term Care (LTC).

**DECISION AND ORDER**

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

GH/nr



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

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

**Counsel for Respondent**

[REDACTED]

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]