



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 19, 2016
MAHS Docket No.: 16-015135

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 telephone hearing was held on December 8, 2016, from Lansing, Michigan. The Petitioner was represented by his [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department properly determine the Petitioner’s eligibility for Food Assistance Program (FAP) and Medicaid (MA)?
?

FINDINGS OF FACT

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

1. The Petitioner was a recipient of MA and FAP.
2. On May 11, 2016, the Department received a copy of “[REDACTED]” from now on referred to as “trust”, dated May 15, 2015. Department Exhibit A, pgs. 1-48.

3. On May 19, 2016, the Department Caseworker received an evaluation from the Legal Services Trust and Annuities Unit, indicating that the trust was not a countable asset because it met all of the conditions of Exception A trust. Department Exhibit B, pgs. 1-2.
4. On September 29, 2016, the Legal Services Trust and Annuities Unit submitted a revised evaluation stating that the trust was a countable asset for FAP and MA because the trust fails to provide repaying Medicaid has priority over all debts and expenses except those given higher priority by law, which does not satisfy the repay agreement since the trustee is authorized to pay funeral expenses prior to payment to the State of Michigan. The trust does not meet the guidelines of unavailable for FAP because the trustee was not a court or institution, or organization or an individual appointed by the court. As a result, the trust is a countable asset where the value of the countable net income and countable assets in the principal of the trust is counted. Department Exhibit C, pgs. 1-7.
5. On September 29, 2016, the Department Caseworker pended the Petitioner's FAP and MA case to close effective November 1, 2016 due to excess assets. Department Exhibit D, pgs. 1-10.
6. On October 7, 2016, the Department received a hearing request from the Petitioner and his Authorized Representative, contesting the Department's negative action.

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 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.

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 Petitioner was a recipient of MA and FAP. On May 11, 2016, the Department received a copy of [REDACTED] from now on referred to as "trust", dated May 15, 2015. Department Exhibit A, pgs. 1-48. On May 19, 2016, the Department Caseworker received an evaluation from the Legal Services Trust and Annuities Unit, indicating that the trust was not a countable asset because it met all of the conditions of Exception A Trust. Department Exhibit B, pgs. 1-2.

On September 29, 2016, the Legal Services Trust and Annuities Unit submitted a revised evaluation stating that the trust was a countable asset for FAP and MA because the trust fails to provide repaying Medicaid has priority over all debts and expenses except those given higher priority by law, which does not satisfy the repay agreement since the trustee is authorized to pay funeral expenses prior to payment to the State of Michigan. The trust does not meet the guidelines of unavailable for FAP because the trustee was not a court or institution, or organization or an individual appointed by the court. As a result, the trust is a countable asset where the value of the countable net income and countable assets in the principal of the trust is counted. Department Exhibit C, pgs. 1-7. On September 29, 2016, the Department Caseworker pended the Petitioner's FAP and MA case to close effective November 1, 2016 due to excess assets. Department Exhibit D, pgs. 1-10. On October 7, 2016, the Department received a hearing request from the Petitioner and his Authorized Representative, contesting the Department's negative action. BAM 600. BEM 400, 401, and 503.

During the hearing, the Department stated that the Petitioner's trust was approved in error by the Department, who with a closer inspection, the Department realized that the trust was a countable asset. The Petitioner's Attorney argued that the priority for the State of Michigan to be paid back was there in the trust, but so is the conflicting language. To be an eligible for an Exception A Trust, the trust would have to make repaying Medicaid a priority over all debts and expenses except those allowed priority by law. The trust fails to provide repaying Medicaid has priority over all debts and expenses except those given higher priority by law, which does not satisfy the repay agreement since the trustee is authorized to pay funeral expenses prior to payment to the State of Michigan. The trust does not meet the guidelines of unavailable for FAP because the trustee was not a court or institution, or organization or an individual appointed by the court. As a result, the trust is a countable asset where the value of the countable net income and countable assets in the principal of the trust is counted.

DECISION AND ORDER

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 determined that the Petitioner had excess assets for FAP and MA.

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



Carmen G. Fahie

Carmen G. Fahie
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

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