



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: November 8, 2019
MOAHR Docket No.: 19-009914
Agency No.: [REDACTED]
Petitioner: [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; 42 CFR 438.400 to 438.424; 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 10, 2019, from Lansing, Michigan. The Petitioner was represented by [REDACTED] [REDACTED] Petitioner's granddaughter and P.O.A, and Attorney Christopher Titus, P# 63271. The Department of Health and Human Services (Department) was represented by Leonard Garcia, Family Independence Manager, Andrea Bowerman, Assistance Payments Worker, and Assistant Attorney General Kyle Bruckner, P# 82625. The Department Exhibit 1, pgs. 1-48, was entered and made a part of the record.

ISSUE

Did the Department properly determine that Petitioner had excess assets for Medical Assistance (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. On March 31, 2019, the sold her Homestead for \$ [REDACTED]
2. On [REDACTED] 2019, Petitioner applied for MA. Department Exhibit 1, pgs. 7-10.
3. On June 28, 2019, the Department Caseworker received a Quit Claim Deed for Petitioner's Homestead that was signed on June 26, 2013, that gave Petitioner a life estate in the property and a remainder interest to the [REDACTED]

Trust (Trust), which was a revocable trust and Petitioner still retained the right and the unrestricted power to sell, convey or otherwise dispose of the property and the right to control any income or money from the asset. Department Exhibit 1, pgs. 17-18.

4. On June 28, 2019, the Department Caseworker received a Certificate of Trust for the [REDACTED] Trust, that was created on June 26, 2013, that was a revocable trust with an amendment signed on July 18, 2013, that made the Trust irrevocable with the intention to transfer the deed of the Homestead from Petitioner to the Trust with Petitioner still retaining control over the assets of the Trust and they were able to be payable to her. Department Exhibit 1, pgs. 19-27.
5. On July 9, 2019, the Trust/Annuity Evaluation Unit submitted a revised evaluation of the Carolyn Marie Royce Irrevocable Trust, that determined that the Department was required to count any assets in the Trust if there is any condition under which the principal and/or income could be paid to or on behalf of the person from the trust per BEM 401, page 12-13. The Trust provides for the distribution of the principal and income to Petitioner on section 4 of the trust document. Since the Trust lists a condition where Petitioner could be paid to or on the behalf of the Petitioner, the Trust principal and income is countable for purpose of determining her MA eligibility. The Trust did meet all of the criteria of a Medicaid Trust as set forth in BEM 401, page 6. Department Exhibit 1, pgs. 28-30.
6. On July 16, 2019, the Department Caseworker received a verification copy of the \$[REDACTED] deposit from the sale of the Homestead that was put in a trust account at [REDACTED] ([REDACTED] dated April 12, 2016. Department Exhibit 1, pgs. 39-40.
7. On July 29, 2019, the Department Caseworker received a copy of a Summary of Discretionary Disbursements regarding the Trust created on June 26, 2013, and trust funded deed on July 18, 2013, where the trustees made the following advance/disbursements from the Trust on a discretionary basis of \$[REDACTED] to Petitioner, \$24,000 to [REDACTED] [REDACTED] \$24,000 to [REDACTED] [REDACTED] and \$10,000 to [REDACTED] [REDACTED]. All disbursement for advances were made at the discretion of the trustees. Department Exhibit 1, pg. 41.
8. On August 9, 2019, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that she had excess assets for MA of over \$2,000 in her Trust per BEM 400 and 401. Department Exhibit 1, pgs. 47-48.
9. On August 28, 2019, the Department received a hearing request from the Petitioner, 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 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, Petitioner sold her Homestead for \$ [REDACTED] on March 31, 2019. On June 28, 2019, Petitioner applied for MA. Department Exhibit 1, pgs. 7-10. On June 28, 2019, the Department Caseworker received a copy of the Quit Claim Deed for the Petitioner's Homestead that was signed on June 26, 2013, that gave Petitioner a life estate in the property and a remainder interest to the [REDACTED] [REDACTED] [REDACTED] Trust, which was a revocable trust and Petitioner still retained the right and the unrestricted power to sell, convey or otherwise dispose of the property. Department Exhibit 1, pgs. 17-18. On June 28, 2019, the Department Caseworker received a Certificate of Trust for the [REDACTED] [REDACTED] [REDACTED] Trust, that was created on June 26, 2013, that was a revocable trust with an amendment signed on July 18, 2013, that made the Trust irrevocable with the intention to transfer the deed of the Homestead from Petitioner to the Trust with Petitioner still retaining control over the assets of the Trust and they were able to be payable to her. Department Exhibit 1, pgs. 19-27.

On July 9, 2019, the Trust/Annuity Evaluation Unit submitted a revised evaluation of the Carolyn Marie Royce Irrevocable Trust, that determined that the Department was required to count any assets in the Trust if there is any condition under which the principal and/or income could be paid to or on behalf of the person from the Trust per BEM 401, page 12-13. The Trust provides for the distribution of the principal and income to Petitioner on section 4 of the Trust document. Since the Trust lists a condition where Petitioner could be paid to or on the behalf of Petitioner, the Trust principal and income is countable for purpose of determining her MA eligibility. The Trust did meet all of the criteria of a Medicaid Trust as set forth in BEM 401, page 6. Department Exhibit 1, pgs. 28-30.

On July 16, 2019, the Department Caseworker received a verification copy of the \$ [REDACTED] deposit from the sale of the Homestead that was put in a trust account at [REDACTED] (1524) dated April 12, 2016. Department Exhibit 1, pgs. 39-40. On July 29, 2019, the Department Caseworker received a copy of a Summary of Discretionary Disbursements regarding the Trust created on June 26, 2013, and trust funded deed on July 18, 2013, where the trustees made the following advance/disbursements from the Trust on a discretionary basis of \$ [REDACTED] to Petitioner, \$24,000 to [REDACTED] [REDACTED] \$24,000 to [REDACTED] [REDACTED] and \$10,000 to [REDACTED] [REDACTED]. All disbursement for advances were made at the discretion of the trustees. Department Exhibit 1, pg. 41.

On August 9, 2019, the Department Caseworker sent Petitioner a Health Care Coverage Determination Notice, DHS-1606, that she had excess assets for MA of over \$2,000 in her Trust per BEM 400 and 401. Department Exhibit 1, pgs. 47-48. BEM 400 and 401.

This Administrative Law Judge finds that even though the original Trust created on June 26, 2013, was revocable and the amendment instituted on July 18, 2013, made it irrevocable, the terms of the original Trust were not changed. Petitioner still retained the right and the unrestricted power to sell, convey or otherwise dispose of the property and the right to control any income or money from the asset while she was alive. The Homestead was not transferred to the Trust because Petitioner had a life estate and when she died the remainder interest would be transferred to Trust. The Homestead was sold on March 31, 2019, before Petitioner died and while she retained a life estate interest in the property. The \$ [REDACTED] from the sale of the Homestead was put in a trust account at [REDACTED] ([REDACTED] Department Exhibit 1, pg. 39.


The Homestead is an excludable asset if it is not in a trust, but once it sold those assets are countable even though these parties put the \$ [REDACTED] in the Trust account. Petitioner is the Trustor, who controls the Trust and the assets where the Trustees only have authority when Petitioner dies or is otherwise incapacitated. This is not the case where Petitioner was proven to be incapacitated. As a result, all of the proceeds from the sale of the Homestead are countable when determining MA eligibility. Therefore, the \$ [REDACTED] is countable for determining MA eligibility. Any funds disbursed that do not meet the excludable definition were divested and the Department is required to determine a divestment penalty.

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 Petitioner had excess assets for MA.

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

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Holly DeGroat
515 South Sandusky
Sandusky, MI 48471

Sanilac County, DHHS

BSC2 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Counsel for Respondent

Kyle A. Bruckner
P.O. Box 30758
Lansing, MI 48909

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]