



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: August 10, 2020  
MOAHR Docket No.: 20-004419  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

### **HEARING DECISION**

Following Petitioner's hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 7 CFR 273.15; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on August 5, 2020. Petitioner, [REDACTED], appeared with his attorney, Sarah Bouck. Respondent, Department of Health and Human Services (Department), had Heather Kilpatrick, Hearing Liaison, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. An 86-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

### **ISSUE**

Did the Department properly deny Petitioner's request for Medical Assistance (MA) and Food Assistance Program (FAP) benefits for excessive countable assets?

### **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 [REDACTED] 2020, Petitioner requested MA and FAP from the Department.
2. At the time, Petitioner was living at [REDACTED] in [REDACTED].
3. The property known as [REDACTED] in [REDACTED] was held in a trust, the Invictus Living Trust.
4. Petitioner created the Invictus Living Trust on December 10, 2013. The trust was created as an irrevocable trust, Petitioner was named beneficiary and trustee,

and the trust was funded with the property known as [REDACTED] in [REDACTED].

5. The Department reviewed Petitioner's request for MA and FAP, and the Department determined that the trust was a countable asset.
6. The Department valued the trust at [REDACTED], which is equal to twice the state equalized value of the property known as [REDACTED] in [REDACTED].
7. The Department determined that Petitioner's countable assets exceeded the limits to be eligible for MA and FAP.
8. On May 12, 2020, the Department mailed a notice of case action and a health care coverage determination to Petitioner. The notice of case action notified Petitioner that his request for FAP was denied because his countable assets exceeded the program limit. The health care coverage determination notice notified Petitioner that his request for MA was denied because his countable assets exceeded the program limit.
9. Thereafter, the Invictus Living Trust transferred the property known as [REDACTED] in [REDACTED] back to Petitioner, and Petitioner reapplied for assistance from the Department.
10. On June 10, 2020, Petitioner requested a hearing to dispute the MA and FAP denials.

### **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).

Petitioner is disputing the Department's decision to deny his request for MA and FAP. The Department denied Petitioner's request for MA and FAP because it determined that his countable assets exceeded the program limits. Each program has different asset rules.

### **MEDICAL ASSISTANCE**

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 administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The asset limit for Medicare Savings Program (MSP) coverage for a group of two is \$11,800. BEM 400 (April 1, 2020), p. 5. The asset limit for other SSI-related MA, such as traditional coverage for the aged or disabled, is \$3,000. *Id.* at 8-9. Countable assets cannot exceed the applicable program limit. *Id.* at 2. An asset is countable if it is available and not excluded. *Id.*

In this case, the asset at issue is a trust. A trust is a Medicaid Trust when it meets all of the following criteria: (a) the person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility, an MA post-eligibility patient-pay amount, a divestment penalty or an initial asset assessment (IAA) amount; (b) the trust was established by the person, his spouse, or someone else acting on his behalf or at his direction; (c) the trust was established on or after August 11, 1993; (d) the trust was not established by a will; and (e) the trust does not meet the definition of a special needs trust. BEM 401 (April 1, 2019), p. 7-8. Petitioner's trust meets all of the criteria, so it is properly considered a Medicaid Trust.

For a Medicaid Trust, whether any portion of the trust is a countable asset is determined based on an evaluation of the principal and income of the trust. *Id.* at 12. An evaluation of the principal of the trust involves a determination of whether the asset(s) used to fund the trust would have been countable for SSI-related MA under BEM 400. *Id.* Petitioner used his homestead, the real property known as [REDACTED] in [REDACTED] to fund the trust. Pursuant to BEM 400, a homestead is not a countable asset for SSI-related MA. BEM 400 at 35. Since Petitioner used his homestead to fund the trust and since an individual's homestead is not a countable asset for SSI-related MA under BEM 400, the principal of Petitioner's trust was not a countable asset. Therefore, the Department did not properly determine Petitioner's eligibility for MA because it counted an asset that was not countable under the Department's policies.

## FOOD ASSISTANCE

The Food Assistance Program (FAP) 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

The asset limit for FAP is \$15,000. BEM 400 (April 1, 2020), p. 5. Countable assets cannot exceed the applicable program limit. *Id.* at 2. An asset is countable if it is available and not excluded. *Id.*

In this case, the asset at issue is a trust. Whether a trust is countable is determined by whether the trust is available. For a trust to be considered unavailable, the trustee of the trust cannot be the FAP applicant or a member of his household. *Id.* at 29-30. Petitioner is the trustee of the Invictus Living Trust, so Petitioner's trust cannot be considered unavailable. Thus, Petitioner's trust is an available asset and must be counted unless specifically excluded.

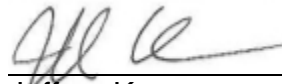
In order to determine if an exclusion applies, the principal of the trust must be evaluated. This is consistent with how a Medicaid Trust is evaluated. The principal of Petitioner's trust consisted of his homestead. An individual's homestead is not a countable asset for FAP. BEM 400 at 34. Since Petitioner used his homestead to fund the trust and since a homestead is not a countable asset for FAP, Petitioner's trust was specifically excluded. Therefore, the Department did not properly determine Petitioner's eligibility for FAP because it counted an asset that was not countable under the Department's policies.

### **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 (a) the Department did not act in accordance with its policies and the applicable law when it determined that Petitioner was not eligible for MA due to excessive assets, and (b) the Department did not act in accordance with its policies and the applicable law when it determined that Petitioner was not eligible for FAP due to excessive assets.

IT IS ORDERED that the Department's decision is REVERSED. The Department shall begin to implement this decision within 10 days.

JK/ml



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Jeffrey Kemm  
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**

Jessica Kirchmeier

Eaton County DHHS – Via Electronic Mail

BSC2 – Via Electronic Mail

D. Smith – Via Electronic Mail

EQAD – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

**Petitioner**

[REDACTED] – Via First Class Mail

[REDACTED] MI [REDACTED]

**Counsel for Petitioner**

Sarah E. Bouck – Via First Class Mail  
3490 Belle Chase Way, Ste. 50  
Lansing , MI 48911