

5. On February 1, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that his FAP case was closed, effective February 1, 2023 ongoing, due to excess assets (Exhibit A, pp. 6-7).
6. On February 1, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that his application for MA was denied, effective January 1, 2023 ongoing because his countable assets exceeded the limit for the program (Exhibit A, p. 5).
7. On February 7, 2023, Petitioner executed Trust Termination and Revocation (Exhibit A, p. 9). The title of his home in Westland, Michigan was transferred to himself in his individual capacity (Exhibit A, p. 10).
8. On February 21, 2023, Petitioner filed a Request for Hearing to dispute MDHHS' determinations regarding his FAP and MA benefits (Exhibit A, pp. 3-4).

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).

Food Assistance Program (FAP)

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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS terminated Petitioner's FAP assistance because it determined that he was over the asset limit for the program.

MDHHS is required to consider a client's assets when determining eligibility for FAP. BEM 400 (January 2023), p. 1. There is an asset test for all FAP groups. *Id.*, p. 3. A FAP group's countable assets cannot exceed \$15,000. *Id.*, p. 5. Assets include cash, personal property and real property. *Id.*, p. 2. Not all assets are considered countable. *Id.* An asset is countable if it meets the availability test and is not excluded. *Id.*, p. 2. MDHHS is required to assume that the asset is available unless evidence shows that it is not available. *Id.* An asset is available if someone in the group has the legal right to use or dispose of the asset. *Id.*, p. 10.

When considering a client's assets, there are special rules that pertain to trusts. A trust is a right of property created by one person for the benefit of themselves or another. BEM 400, p. 29. For FAP, the trust principal and any income retained by the trust are considered unavailable if all of the following conditions apply: (i) the trust arrangement is

not likely to end during the benefit period; (ii) no asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period; (iii) the trustee administering the trust is a court, or an institution, corporation or an organization that is not under the direction or ownership of any asset group member, or an individual appointed by the court; (iv) investments made on behalf of the trust do not directly involve or benefit any business or corporation under the control or direction of an asset group member; and (v) the funds in the irrevocable trust are established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary or established from funds of a person who is not a member of the asset group. *Id.*, p. 30. A homestead which continues to be the primary residence of the FAP group **is excluded**, even if the title is placed in a revocable/irrevocable trust (emphasis added). *Id.* To determine the value of real property, MDHHS may use the state equalized value on current property tax records, multiplied by two. *Id.*, p. 33.

The record shows that Petitioner executed the Trust and transferred ownership of his home in [REDACTED], Michigan to the Trust. Petitioner testified that the Trust was created because he was experiencing severe health problems at the time. MDHHS determined that the Trust did not meet the definition of unavailable because Petitioner was an asset group member and he had the power to revoke the trust or to change the name of the beneficiary during the benefit period (Exhibit A, p. 20). Additionally, the trustee was not a court or an institution, corporation or organization not under the direction or ownership of any asset group member, and the trustee was not an individual appointed by the court (Exhibit A, p. 20). MDHHS determined that the value of the items in the Trust were countable assets for the purposes of FAP (Exhibit A, p. 20). MDHHS concluded that Petitioner exceeded the \$15,000.00 asset limit for FAP, because the Trust contained his home in [REDACTED] Michigan and the state equalized value of the home was \$67,800.00, making the value of the home \$135,600.00 (Exhibit A, p. 23).

MDHHS' determination was improper because policy provides that a homestead, which continues to be the primary residence of the FAP group is excluded, even if the title is placed in a revocable/irrevocable trust. BEM 400, p. 30. MDHHS did not present any evidence to conclude that the home at issue was no longer Petitioner's primary residence. There was no evidence that Petitioner had other property in the Trust or otherwise exceeded the asset limit for FAP. Therefore, MDHHS action of terminating Petitioner's FAP benefits was improper.

MDHHS stated that Petitioner's FAP benefits were reinstated and approved after he reported that the Trust had been revoked and title of the home was transferred back into his name in his individual capacity. However, it is unclear from the record when the benefits were reinstated and whether there was a gap in his FAP benefits.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it terminated Petitioner's FAP benefits.

Medicaid (MA)

MA 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. MDHHS administers MA pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA is also known as Medical Assistance.

In this case, MDHHS denied Petitioner's application for MA because it determined that he was over the asset limit for the program.

MDHHS is required to consider a client's assets when determining eligibility for certain MA categories, including SSI-related Group 2 MA category. BEM 400, p. 1. MA under the SSI-related Group 2 MA category is available to person who is aged (65 or older), blind or disabled. BEM 166 (April 2017), p. 1. Countable assets cannot exceed the applicable asset limit. *Id.* BEM 400, p. 1. Assets include cash, personal property and real property. BEM 400, p. 2. Not all assets are considered countable. *Id.* An asset is countable if it meets the availability test and is not excluded. *Id.*, p. 2. MDHHS is required to assume that the asset is available unless evidence shows that it is not available. *Id.* An asset is available if someone in the group has the legal right to use or dispose of the asset. *Id.*, p. 10.

When determining the value of a client's assets, there are special rules that pertain to trusts. For MA, the policy that applies depends on the terms of the trust and when the trust was established. BEM 401 (January 2022), p. 1. A Medicaid Trust is a trust that is revocable and contains resources belonging to a person and a person's spouse. *Id.*, p. 5. A revocable trust is a trust that can be revoked or modified by the grantor, a court, the trustee, or any other person or entity. *Id.* The resources include any income and assets the person or spouse is entitled to but does not receive because of action by the person or spouse or by someone else with legal authority. *Id.*

A Medicaid Trust is a trust that meets all of the following criteria: (i) 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; (ii) the trust was established by the person, the person's spouse or someone with legal authority; (iii) the trust was established on or after August 11, 1993; (iv) the trust was not established by a will; and (v) the trust is not a special needs or pooled trust. BEM 401, p. 8.

Countable assets from MA trusts include assets that are countable using the SSI-related MA policy in BEM 400. BEM 401, p. 12. MDHHS counts the total value of the countable assets and countable income in the principal of a revocable trust. *Id.* Asset eligibility exists 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. *Id.*, p. 7. For SSI-related MA categories the asset limit for a group of one is \$2,000.00 and the asset limit for a group of two is \$3,000.00. BEM 400, p. 8. At application, MDHHS may not

authorize MA for future months if the person has excess assets on the processing date. *Id.* MDHHS excludes one homestead for an asset group. BEM 400, p. 35. A homestead is where a person lives that they own, is buying or holds through a life estate. *Id.*

Here, MDHHS determined that the Trust met the criteria of a Medicaid Trust because it was established by Petitioner and Petitioner's resources must be counted to determine MA eligibility (Exhibit A, p. 21). Additionally, the July 7, 2022 Trust was established after August 11, 1993, it was not established by a will and is not a special needs or pooled trust (Exhibit A, p. 21). Further, the Trust could be revoked or amended by Petitioner (Exhibit A, p. 21). MDHHS determined that the assets of the Trust were countable for the purposes of MA eligibility and included Petitioner's home in [REDACTED] Michigan. The home had an assessed value of \$135,600.00, and therefore, exceeded the asset limit for SSI-related MA.

The record shows that MDHHS properly determined that Petitioner exceeded the asset limit for the MA program at application because the value of the Trust exceeded the asset limit for the program. The value of Petitioner's home was a countable asset because it did not meet the definition of homestead. After it was transferred to the Trust, Petitioner was no longer the owner. Although Petitioner terminated the Trust and transferred ownership of the home to himself in his individual capacity on February 7, 2023, MDHHS could not authorize MA for future months because he had excess assets on the processing date.

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 application for MA.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the MA application denial and **REVERSED IN PART** with respect to FAP termination.

MDHHS 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. Reinstate Petitioner's FAP case, effective February 1, 2023 ongoing;
2. Redetermine Petitioner's eligibility for FAP, effective February 1, 2023 ongoing;
3. Issue supplements to Petitioner for an FAP benefits that he was eligible to receive but did not, from February 1, 2023 ongoing; and

4. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
Administrative Law Judge

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

Via-Electronic Mail :

DHHS

Jeanenne Broadnax
Wayne-Taylor-DHHS
25637 Ecorse Rd.
Taylor, MI 48180

**MDHHS-Wayne-18-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
M. Schaefer
EQADHearings
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Via-First Class Mail :

Petitioner

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