



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 29, 2024
MOAHR Docket No.: 23-010025
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

ORDER OF DISMISSAL
FOR LACK OF JURISDICTION

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. After due notice, a telephone hearing was held on March 21, 2024, from Lansing, Michigan. Petitioner was represented by his authorized hearing representative [REDACTED] [REDACTED]. The Department was represented by Pamela Wells.

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 July [REDACTED] 2023, the Department received Petitioner's application for Medical Assistance (MA).
2. Petitioner was over 64 years old on July [REDACTED] 2023.
3. On June [REDACTED] 2023, Petitioner was admitted into long term care.
4. Petitioner reported a residence on his July [REDACTED] 2023, application form that had been placed in a trust.
5. The trust entitles Petitioner to revoke or amend the trust at any time.
6. The residence has a fair market value of \$[REDACTED].
7. On July [REDACTED] 2023, the Department received a copy of a bank statement showing a balance exceeding \$2,000.
8. On August [REDACTED] 2023, the Department notified Petitioner that his application for Medical Assistance (MA) had been denied.

9. On August 22, 2023, Petitioner's authorized hearing representative filed a request for a hearing protesting the denial of Petitioner's application for Medical Assistance (MA).

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 through 42 USC 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees, and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (March 1, 2024), pp 1-7.

The available asset limit for a person over 64 years of age is \$2,000. BEM 400.

The trust principal is considered an available asset of the person who is legally able to direct the use of the trust principal for his/her needs unless the trust is a Medicaid trust or a Medicaid qualifying trust. Department of Health and Human Services Bridges Eligibility Manual (BEM) 401.

The trust containing a residence that was established by Petitioner allowed Petitioner to revoke or amend the trust at any time. The does not meet the criteria of a Medicaid trust, a Medicaid qualifying trust, or a special needs trust. Therefore, the residence placed in the trust is an available asset to Petitioner.

Further, the hearing record supports a finding that cash assets exceeding \$2,000 were available to Petitioner.

The issue presented her is not whether Petitioner's assets exceed the limit, but whether they are available. Petitioner's representative argues that it was not Petitioner's intent to place his residence in the trust and that Petitioner attempted to retroactively remove the residence from the trust. The Department does not dispute that the trust has been amended in an attempt to reflect Petitioner's intent at the time it was created.

Despite Petitioner's intent after the fact, the assets in Petitioner's trust were available to him in July of 2023, and he was not eligible for MA benefits.

Further, Petitioner's representative credibly testified that Petitioner passed on or around October 2023.

Department policy regarding authorization to represent for Medicaid applications states:

An authorization to represent is a form of a power of attorney. When a person who gave the authorization dies, the power of attorney ends. After death, the person does not exist as a legal entity, so no one can represent the person. However, if a person dies while the application is pending, the application should be processed.

An estate may be created to handle the remaining business and financial issues that were outstanding at the time of death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a representative of the estate.

Department of Health and Human Services Bridges Administrative Manual (BAM) 110 (October 1, 2023), p 12.

However, the Department policy regarding hearing requests signed by an Authorized Hearing Representatives (AHR's) for hearings states:

The appointment of an AHR must be made in writing. An AHR must be authorized or have made application through probate court before signing a hearing request for the client. Verify the AHR's prior authorization unless the AHR is the client's attorney at law, parent or, for MA only, spouse. Relationship of the parent or spouse must be verified only when it is questionable. MOAHR will deny a hearing request when the required verification is not submitted; see local office and MOAHR Time Limits in this item.

Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (February 1, 2024), pp 2-3.

Acceptable verification sources for an AHR include a probate court order or court-issued letters of authority. BAM 600, p. 3.

Department policy does not allow individuals to retroactively allocate their available assets for the purposes of becoming eligible for MA benefits. Further, no evidence was presented during the hearing that Petitioner's authorized representative has continuing authority to represent Petitioner's estate with respect to the July 6, 2023, application for assistance.

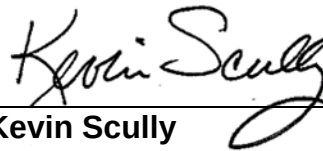
The hearing record supports the Department's determination that Petitioner was not eligible for MA benefits based on his July ■ 2023, application for assistance is affirmed.

Further, there is no jurisdiction for this Administrative Law Judge further address the issues raised by the August 22, 2023, hearing request filed by Petitioner's representative. The August 22, 2023, hearing request is dismissed for lack of jurisdiction.

Petitioner's hearing request is therefore **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.

KS/dm



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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
Eric Carlson
Mason County DHHS
MDHHS-Mason-
Hearings@michigan.gov

SchaeferM

EQADHearings

BSC3HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]