STATE OF MICHIGAN
INGHAM COUNTY CIRCUIT COURT

* *

In the Matter of

[redacted]

Petitioner

Case No. [redacted]
Honorable [redacted]

v.

MICHIGAN DEPARTMENT OF HUMAN SERVICES
and JAY W. SEXTON, ADMINISTRATIVE LAW JUDGE

* *

[redacted]

Co-Counsel for [redacted], Petitioner

[redacted]

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SUPPLEMENTAL STATEMENT OF FACTS

At the February 15, 2007, Hearing, ', witness for DHS, testified that on October 5, 2006, sent DHS Form 3503 to ..., requesting that ... disclose the assets contained in the SNT.[1] The DHS Form 3503 that was issued to only requested a disclosure of assets and did not request verification of s income.

A memo was issued by ....., the Departmental Analyst in the Medicaid Policy Unit, on September 18, 2006, stating that "the countable asset for r is the value of all the countable net income and the countable assets in the principal of the trust."[2] On October 16, 2006, attorney, , ..., submitted a request for a hearing to appeal the Department's conclusion that the trust assets were countable, and to dispute the conclusion that a review of the Trust's assets was necessary.

On August 13, 2007, a second DHS Form 3503 "Verification Checklist" was sent to ... t, Trustee of the ' l Needs Trust, on behalf of ... r. *Exhibit A.* This form requested that Sid provide the following information:

> I need to know if any payments are made directly to rom the ' Special Needs Trust. If yes, please provide proof of the monthly amount. If no direct payments are made to her, I do need a statement indicating that. Thank you.

On or about August 24, 2007, DHS caseworker n spoke with ' and stated that s Medicaid eligibility will be reinstated upon the receipt of a letter stating that the Trust does not distribute income directly to As requested by reply to the DHS Form 3503 (in the form of a letter) was timely submitted on August 27, 2007. *Exhibit B.*

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[1] Hearing Transcript at 27, lines 9-13.
[2] AR Tab 2 at 9 (14).

ARGUMENT

I. DHS'S ARGUMENT THAT ALLEGED _'S COMPLETE FAILURE TO COMPLY WITH THE VERIFICATION CHECKLIST MUST BE DISREGARDED BECAUSE IS NOT REQUIRED TO PROVIDE THE INFORMATION FOR VERIFICATION.

DHS attempts to paint a negative picture of by alleging that she completely and totally flouted the Department's regulations by failing to give detailed information about her status as a beneficiary of a third-party discretionary spendthrift trust. This is a vexatious position as the request for information only concerned assets. DHS argues that the worker "wanted to learn all about the , not **just** its assets or income."[3] Assets within the Trust are not subject to verification (see Argument I, subsection (b) of *Brief on Appeal*). There was no direct income to report (see Argument I, subsection (c) of *Brief on Appeal*), the only information that was able and required to give to the Department was a copy of the Trust itself.

As the record does not contain a verification checklist requesting a copy of the Trust agreement, a logical conclusion is that verbally requested a copy of the Trust and willingly supplied with a copy in a timely manner. Though the record is silent as to when or how the Department obtained a copy of the Trust, by ruling out magic, one can assume that either or an agent of , provided Caseworker with a copy of the Trust prior to forwarding of the Trust to the Bureau of Legal Affairs for DHS on September 13, 2006.[4] This, combined with compliance with the Verification Checklist sent in August of 2007[5], shows that clearly made a good faith attempt at complying with reasonable requests of the Department. However, did not tolerate the unreasonable requests of the Department to disclose confidential asset information that is not subject to verification[6], and she appropriately filed a Request for a Fair Hearing as an objection to said requests. It would be completely illogical for to comply with the requests contained on the initial Verification Checklist while simultaneously requesting a fair hearing to determine whether she should comply. Thus, ALJ Sexton's attempt to penalize for not responding to a non-existent written request verifying non-existent direct income payments, and for not complying with the irrelevant fishing inquiry as to the Trust's assets, is arbitrary and capricious (MCL 24.306(1)(e)),

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[3] DHS's Brief at 7.
[4] AR Tab 2 at 10 (13).
[5] Exhibit B.
[6] Argument I, subsection (b) of *'s Brief on Appeal.*

not based upon proper procedure (MCL 24.306(1)(c)), is obviously not supported by competent, material or substantial evidence (MCL 24.306(1)(d), and is based on a material error of law (MCL 24.306(1)(f)). This Honorable Court has a duty to overturn the administrative decision of ALJ Sexton, as it is arbitrary, not based upon proper procedure, is not based upon material evidence on the whole record, and is legally incorrect. MCL 24.306(1).

Further, DHS's attempts to justify its actions are frivolous and lack merit; as DHS has changed its position on this issue, and now agrees that . loes not need to provide the DHS with the Trust's financial information. Further, if the Trustee violates the terms of the Trust and make disbursements directly to . *then* . will have income to report. Until that time, however, this Honorable Court must disregard DHS's arguments that .. should be ineligible for Medicaid based on "failure" to provide the DHS with any information regarding the Trust.

II. THIS HONORABLE COURT MUST DISREGARD DHS'S ARGUMENTS REGARDING LACK OF PRESERVATION OR WAIVER OF ISSUES AND DEFENSES.

The administrative hearing was to be held on the issue of whether the Trust's assets were subject to verification,[7] and whether the denial of benefits was proper. A Hearing Brief on this issue was properly submitted in lieu of testimony.[8] Instead of properly adjudicating the issue before him, ALJ Sexton instead adjudicated a separate issue without giving ' adequate notice of, and thereby an opportunity to address, the new issue on the record. As a direct result of the Department's actions, ' was unable to preserve any objections during the hearing to the Department's position regarding the new issue, or relevancy of same.

It would be completely against the interests of justice for this Honorable Court to penalize the for failing to object to a new issue when 1) 's Attorney was prevented from attending the hearing because of DHS's refusal to grant a reasonable request for adjournment, and 2) the Administrative Judge had no authority to adjudicate a new issue. This Honorable Court must not positively reinforce DHS for their due process violations by sustaining their attempts at excluding Sid's objections due to non-preservation.

DHS argues that ' was afforded the opportunity to address the new issue when, during the hearing, it became evident that the hearing would focus on the non-provision of verification

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[7] *see Appellant's Brief on Appeal*, Argument II, subsection (a).
[8] AR Tab 2 at 23.

information, rather than the Trust itself. This argument is unpersuasive because neither nor her attorney were able to be present for the hearing. The participation of was strictly limited to submitting the Hearing Brief. Nothing in the Hearing Transcript suggests that the participated in the Hearing in any other form, as she did not cross-examine the witness or testify in any manner outside of submitting the Hearing Brief. Further, though a representative may appear at the hearing with or without the client, a support person may only be present if there is a statement on the record that the person's presence is requested. PAM 600 at 26. Though executed a blanket authorization statement authorizing the firm of to act on her behalf,[9] this authorization was not *on the record.* As DHS persistently rallies for the exclusion of statements contained within the Hearing Brief for failure to be sworn and on the record, then surely DHS will not argue that the authorization statement by a layperson, which does not contain a notarial acknowledgment, and subsequent appearance of r, satisfies the Department's rule regarding participation of persons at the hearing. Lastly, ALJ Sexton should have known it was a denial of s due process rights to change the issue at the hearing.

DHS also argues that waived her right to object to the issue of the denial of her request for adjournment by appearing at the administrative hearing and not objecting at the hearing. This argument is unpersuasive because objected to the denial of her adjournment request in the Hearing Brief that was submitted in lieu of testimony.[10] Contrary to DHS's arguments, ALJ Sexton should not have "reasonably disregarded" account of her request for adjournment because an attorney's signature on a document verifies that, to the best of her knowledge, information and belief, the document is well grounded in fact and is warranted by existing law. MCR 2.114 (D). Despite DHS's arguments that reasonably prudent persons do not rely on attorneys' statements in lieu of sworn testimony, as the only person who was in a position to provide testimony as to the denial of 's adjournment request was herself (or n), and as MCL 24.727(1) permits a written answer to be presented in lieu of testimony, the logical conclusion is that r's first-person account of the adjournment request was properly submitted as evidence. n provided no testimony on the record.

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[9] AR Tab 2 at 4 (20).

[10] For a discussion on the admission of the Brief in lieu of testimony, see *Appellant's Brief on Appeal*, Argument II, subsection (a), at pages 16-17.

This Honorable Court must not permit DHS to muddle this appeal by re-focusing the issues on whether appropriately responded to the Verification Checklist and by insisting on procedural niceties that do not carry weight in the face of Department's actual due process violations. As discussed at length in *Appellant's Brief on Appeal*, the issue is whether the assets in the Trust are subject to verification. One of the many reasons why ALJ Sexton's decision must be overturned is that it failed to address the proper issue and was therefore not based on proper procedure. It is a complete abuse of discretion to focus on the issue of noncompliance with the Verification Checklist when the failure of the Department to abide by their own Notice requirements prevented from launching an appropriate objection or protecting her due process rights.

III. AS THE DHS HAS SUBSEQUENTLY PLEDGED TO RENDER) ELIGIBLE FOR MEDICAID, AN AWARD OF FEES AND COSTS IS APPROPRIATE.

As opposed to filing a Post-Judgment Motion for Fees and Costs, in the interest of judicial economy, s submitting the following arguments prior to this Honorable Court deeming her the prevailing party so as to afford this Honorable Court an opportunity to address the issue of costs and fees in the order following oral arguments.

a. Costs and Fees Will Be Appropriate under MCR 2.625

Under Michigan Court Rule (MCR) 2.625 (A)(1), this Honorable Court may grant costs to a prevailing party in an action, unless otherwise prohibited. When an appellant in Circuit Court improves his or her position on appeal, he or she is deemed the prevailing party. MCR 2.625 (B)(4). If this Honorable Court determines that the arbitrary and capricious decision of ALJ Sexton should be overturned, then will be deemed the "prevailing party."

MCR 2.101(B) defines an "action" as being "commenced by filing a complaint with a court." This language could seemingly preclude an award of costs in a Circuit Court appeal from an administrative hearing, however, this application of the definition found in MCR 2.101(B) to MCR 2.625 contradicts MCR 2.625 (B)(4), which specifically authorizes an award to an appellant in the Circuit Court. DHS's arguments to the contrary must be disregarded.

An award of costs and fees may include reasonable attorney fees under MCL 600.2591. Those fees may include the time and labor of legal assistants who give non-clerical work under the supervision of an attorney. MCR 2.626. A court must consider the factors in MRPC 1.5(a)

to determine what constitutes a reasonable attorney fee. *RCO Engineering v ACR Industries, Inc*, 235 Mich App 48, 597 NW2d 534 (1999). The court need not detail its findings on each factor considered in determining a reasonable attorney fee in awarding the fee. *In re Attorney Fees and Costs*, 233 Mich App 694, 593 NW2d 589 (1999).

Michigan case law has established a test to determine the reasonableness of challenged attorney's fees. In *Crawley v Schick,* 48 Mich App 728, 737 (1973), the court of appeals enumerated guidelines for determining "reasonableness"

The Court in *Crawley* stated:

> There is no precise formula for computing the reasonableness of an attorney's fee. However, among the facts to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.

48 Mich App at 737. The Michigan Supreme Court adopted the Crawley standards in *Wood v DAIIE,* 413 Mich 573, 588 (1982).

A considerable amount of effort and expertise is required to appeal an administrative decision of the Department of Human Services. The time and expenses listed on the invoices, which are attached as Exhibits C and D, illustrate the reasonableness of the services provided, and justify the fees for the time, effort, and expense spent in the appeal of the arbitrary and capricious decision of the Administrative Law Judge. If this Honorable Court deems Sid the prevailing party, and if the Department contests the reasonableness of prayer for fees and costs, shall submit a brief providing further detail of the reasonableness of the requested attorney fees.

In regards to the granting of attorney fees to multiple attorneys, though reasonable attorney fees are usually limited to the fee charged by a single attorney, there is no bar to compensating multiple attorneys for non-duplicative time and labor spent in litigating an action. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 602 NW2d 633 (1999). Thus, the inclusion of fees incurred from the firm of r, PLC, in addition to the fees charged by , PC, should not preclude a determination that the attorney fees requested are reasonable. In accordance with MCR 2.625 (G)(2), statements verifying the accuracy of the Bill of Costs are attached as Exhibit E.

As stated in s *Brief on Appeal,* a Medicaid beneficiary must not have to bear the costs of enforcing public policy and defending his rights against a governmental agency with an unlimited legal budget. State agencies are not insulated from the consequences of their noncompliance with Federal law. *Westside Mothers v Haveman*, 289 F.3d 852 (6th Cir. 2002). As such, an award of attorney fees and costs would be appropriate under MCR 2.625 as a way of reimbursing for actual costs and fees incurred during her struggle for a proper eligibility determination.

b. An Award of Costs and Fees under MCR 7.101 (O) will be Appropriate.

"Any inconvenience or costs" which are incurred by a prevailing party in an administrative appeal can be corrected by the remedy of taxing reasonable costs and fees against the opposing party. *Smith v Merrill Lynch Pierce Fenner & Smith*, 155 Mich App 230, 234; 399 NW2d 481 (1986). Under MCR 7.101(O) "costs in an appeal to the circuit court may be taxed as provided in MCR 2.625." Please refer to Section (a), *supra*, for a discussion on the propriety of awarding costs to Sid under MCR 2.625. A prevailing party may tax reasonable costs incurred in the appeal. MCR 7.101(O). Those costs may include expenses taxable under applicable court rules or statutes. MCR 7.101(O)(6).

The inconvenience borne by as a result of the arbitrary and capricious decision of ALJ Sexton, resulted in the incursion of hundreds of dollars in costs and attorney fees. These fees, as detailed in Exhibits C and D, were reasonable and necessary for the proper adjudication of this case. An award of attorney fees and costs, consistent with the Bills of Costs attached, would be appropriate in this case under MCR 7.101(O), and the referenced rules of MCR 2.625 and MCL 600.2441.

c. An Award of Damages and Sanctions under MCR 7.101(P) will be Appropriate.

As the court in *Commonwealth Power Company v Department of Natural Resources*,[11] stated that MCR 2.625(A)(1) is not a proper avenue for a Circuit Court to impose sanctions for vexatious proceedings during an appeal from an administrative decision, as such, does not submit request that this Honorable Court impose *sanctions* for vexatious proceedings under MCR 2.625(A)(1). Instead requests that this Honorable Court assess sanctions against DHS under MCR 7.101(P).

[11] *Commonwealth Power Company v Department of Natural Resources*, unpublished opinion per curiam of the Court of Appeals, decided March 21, 2000, (Docket No. 204399; 210844).

Sanctions should be applied only "in plain cases," where the result is so apparent to the court that it should have been apparent to the parties. *McIntosh v Chrysler Corporation*, 212 Mich App 461, 470; 538 NW2d 428 (1995). From the beginning, has argued that the assets and income of the Trust were not subject to verification. As the Department changed its position on the issue of verification mid-appeal, prior to a full adjudication of the issues concerning the Trust, and has pledged to render eligible for Medicaid, this Honorable Court must determine that it was (and continues to be) plain to the Department that the Trust was not subject to verification and that denying eligibility based on failure to verify non-verifiable assets and income was an arbitrary and capricious material error of law.

The Circuit Court may assess actual and punitive damages when it determines any of the proceedings in an appeal were vexatious because an argument filed in a case or any testimony presented in the case was grossly lacking in the requirements of propriety. MCR 7.101(P)(1)(b). This Honorable Court must find that DHS's arguments that should be ineligible for failure to verify non-verifiable assets and for not providing income information <u>when it was not requested</u> are completely lacking in propriety. Furthermore, this Honorable Court must find that the Department's failure to grant an adjournment when properly requested, and that the comedy of errors that served as a "fair hearing" constituted not only an unconstitutional deprivation of Sid's due process rights, but as a vexatious proceeding and "unfair" hearing.

Though excessive damages and sanctions would always be preferable, recognizes that the court rules place a ceiling on them. MCR 7.101(P)(2). As such, in accordance with MCR 7.101(P)(2), limits her prayer for relief to actual damages and expenses incurred because of the vexatious proceedings, including reasonable attorney fees as described *supra,* and punitive damages in an amount that this Honorable Court deems equitable (but not exceeding an added amount that is greater than actual damages). MCR 7.101(P)(2).

d. <u>An Award of Costs and Fees will be Appropriate under MCL 24.323.</u>

As this Honorable Court is given the authority to overturn arbitrary and capricious decisions of Administrative Law Judges pursuant to the MCL 24.306 of the Administrative Procedures Act (APA)[12], would be remiss to ignore the portion of the APA that awards costs and fees to a prevailing party. Unfortunately, due to DHS Department's persistent habit of not

[12] 1969 PA 306, MCL 24.306.

taking issues concerning fees to the Court of Appeals, for fear of setting precedent, is unable to cite any case law as precedent.

Costs and fees incurred by a prevailing party in connection with their contested case may be awarded to the prevailing party by a "presiding officer that conducts a contested case" if it is found that the agency's position was "frivolous." MCL 24.323(1). Said rule is heavily weighted with legal terms of art, each of which require legal analysis regarding applicability.

i. The definition of "Presiding Officer" Does Not Exclude Circuit Court Judges, This is a "Contested Case," and This Appeal Qualifies as a "Continuous Proceeding."

The first call for interpretation of seemingly plan language concerns whether a Circuit Court Judge, reviewing a case on appeal from an administrative agency, qualifies as a "presiding officer" as defined by MCL 24.322(4). The definition is as follows:

> "Presiding officer" means an agency, 1 or more members of the agency, a person designated by statute to conduct a contested case, or a hearing officer designated and authorized by the agency to conduct a contested case. *emphasis added.*

DHS will argue that a "presiding officer" is limited to persons presiding at the administrative level. However, MCL 600.631 grants the Circuit Court the authority to conduct an appeal from an administrative tribunal. Though it would be interesting to hear an argument by DHS that an appeal is not a contested case, such arguments must fail, for the parties in this case would have settled if the issues on appeal were not contested and the definition of "contested case" found at MCL 24.203(3) does not suggest otherwise.[13]

Further, a determination of the legal rights of (a named party) were required to be made by ALJ Jay Sexton, and the appeal from that decision was taken to this court, the initial Administrative hearing and the subsequent appeals are to be deemed a continuous proceeding *as though before a single agency.* MCL 24.203(3). DHS may illogically argue that MCL 24.203(3) limits the application of the term "continuous proceeding" to an initial administrative hearing and an appeal taken to another agency (and not to the Circuit Court). Though said definition does state that a hearing "before an agency and an appeal from its decision" heard by another agency can be a "continuous proceeding," it does not exclude the next logical step in the

[13] MCL 24.322 (1) states the following: "contested case" means a case as defined in section 3(3) [MCL 24.303(3)] but does not include a case that is settled or a case in which a consent agreement is entered into or a proceeding for establishing a rate or approving, disapproving, or withdrawing approval of a form.

continuum of a contested case, which is an appeal to the Circuit Court. This Honorable Court must ignore arguments excluding Circuit Court judges as presiding officers under MCL 24.203(3), because it would be completely illogical and inequitable to conclude that s appeal to this court constituted a proceeding separate from the administrative proceedings.

DHS may next argue that a Circuit Court judge is precluded as being a "presiding officer" because MCL 24.325 states that "a party that is dissatisfied with the final action taken by the presiding officer" under MCL 24.323 may seek judicial review of the action under MCL sections 24.301 – 24.306 ("chapter 6"), and "chapter 6" regards appeals *to* the Circuit Court. This argument has little merit. MCL 24.325 provides an avenue for parties to object to the actions of an *administrative* presiding officer, it does not exclude other types of presiding officers from application of the term "presiding officer" in any way. For illustration, if this Honorable Court determines that it is not a "presiding officer" pursuant to said argument, then an Administrative Law Judge who holds a hearing regarding the decisions of intra-agency presiding officers would themselves be excluded from the definition. Furthermore, an agency-officer conducting an appeal from another agencies decision (an option under MCL 24.203(3)), would also be nonsensically precluded from being deemed a "presiding officer." Thus, this Honorable Court qualifies as a "presiding officer" under MCL 24.322(4), and has the authority to award costs and fees to the prevailing party under MCL 24.323(1).

ii. The Decision of ALJ Sexton was "Frivolous."

should be able to prevail on the entire record due to the fact that DHS's arguments are unpersuasive, and devoid of merit to the degree of frivolity. An agency's position will be deemed "frivolous" for the purposes of assessing costs and fees under 24.323 if any of the following conditions are met:

> (a) The agency's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.
> (b) The agency had no reasonable basis to believe that the facts underlying its legal position were in fact true.
> (c) The agency's legal position was devoid of arguable legal merit.
> MCL 24.323(1)(a)-(c), *emphasis added.*

This Honorable Court is not to displace the agency's choice between two reasonably differing viewpoints. *MERC v Detroit Symphony Orchestra, Inc.*, 393 Mich 166, 127 (1974). If this Honorable Court displaces the agency's decision in favor of , a logical conclusion is that

DHS's failure to concede the view of was unreasonable; thus being frivolous under MCL 24.323(1)(b).

DHS's subsequent unilateral pledge to approve for Medicaid upon receipt of a letter stating that she does not receive income from the Trust is a clear illustration of how the Department has no legal or factual basis to assert that their legal position (that must verify the Trust's assets and income prior to eligibility) is true. Further, DHS cannot claim that there is any legal merit to its argument that should be found ineligible for failure to verify non-existent income, as that was not even requested by DHS, or that must respond to DHS's request for asset information (a request that was clearly a fishing expedition) by submitting a hearing request. As the Department frequently determines eligibility incorrectly based on value in the Trust, rather than the terms of the Trust, must not be penalized for objecting to their blanket requests.

As the Department's arguments were completely devoid of legal merit, and there was no legal or factual basis for their decisions, requests that this Honorable Court determine that DHS's position are frivolous, and sanction DHS in accordance with MCL 24.323.

e. The Exception to MCL 24.323, Found at MCL 24.315(3)(e) Does Not Apply to This Case.

Chapter Seven of the Administrative Procedures Act[14] contains a list of exceptions to other Chapters of the APA. Specifically, subsection (3)(e) of section 115 of Chapter seven, MCL 24.315(3)(e), states that Chapter 8[15] does not apply to "Family independence agency public assistance hearings under section 9 of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.9 of the Michigan Compiled Laws."

argues that MCL 24.315(3)(e) is inapplicable to this case because there is no longer a "Family Independence Agency," and because Appellant was not afforded an adequate or fair hearing. An examination of MCL 400.9 is warranted to determine whether its application to a case involving the Department of Human Services.

MCL section 400.9(1) is as follows:

> Pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the director shall promulgate rules for the conduct of hearings

[14] MCL 24.311 – 24.315
[15] MCL 24.321 – 23.328

> within the state department. The rules shall provide adequate procedure for a fair hearing of appeals and complaints, when requested in writing by the state department or by an applicant for or recipient of, or former recipient of, assistance or service, financed in whole or in part by state or federal funds. Hearings shall be conducted by agents designated by the director. The director may appoint a hearing authority to decide these cases. The hearing authority shall be vested with the powers and duties of the director to hold and decide hearings. The director may also upon his or her own motion review a decision of a county or district department with respect to the granting of assistance financed in whole or in part by state or federal funds, and may consider and pass upon an application for assistance that has not been acted upon by the county or district department within a reasonable time.

In an action between an agency and an applicant of assistance, when the Administrative Law Judge is an employee of the agency, there is an undeniable conflict of interests. In order to have a "fair hearing," a neutral third party must preside. In this case, Administrative Law Judge Jay W. Sexton is an employee of the Department of Human Services[16], and was thereby not neutral in his actions or his ruling in this matter.

Furthermore, as ALJ Sexton changed the focus of the administrative hearing without giving proper notice to and as s reasonable request for an adjournment was summarily denied by DHS employee without good cause, DHS cannot argue that was afforded a fair hearing. As such, the hearing was not conducted under MCL 400.9 and the exclusion in MCL 24.315(3)(e) should not apply to s prayer for actual costs and attorney fees stemming from the fundamental and clear errors of the Department of Human Services.

[16] DHS's Brief at 1, footnote 1.

RELIEF REQUESTED

respectfully requests that this Honorable Court overturn the arbitrary decision by ALJ Sexton that was based upon improper procedure and a material error of law, and is thereby unauthorized by law. MCL 24.306 and *Brandon School Dist v Michigan Ed Special Services Ass'n,* 191 Mich App 257, 263 (1991).

Further, in light of the Department's recent pledge to render eligible for Medicaid, respectfully requests that this Honorable Court find that the facts of the case support a classification of the SNT as an "other trust" and that

1. the assets contained in the SNT are not countable for Medicaid purposes,
2. disbursements from the SNT are to be counted only to the extent that money is actually disbursed to and not if disbursements are made to third parties in exchange for goods and services in accordance with the provisions of the SNT and PEM 500 at page 33.
3. s not required to submit verification of the assets contained in the SNT, and
4. s eligibility for Medicaid is to be retroactively reinstated.

As the costs and attorney fees requested by are reasonable and actual, and as she has fulfilled the requirements of MCR 2.625(G), respectfully requests that this Honorable Court find that she is the Prevailing Party, and, in accordance with MCR 2.625, MCR 7.101(O) and MCL 24.323, order the Department of Human Services to pay $9,436.70 in costs to firm, $3,342.86 in costs to , PLC, for services rendered of counsel, and any additional attorney fees and costs incurred by in defending her Medicaid eligibility.

As the arguments submitted by DHS were vexatious, respectfully requests that this Honorable Court asses punitive damages under MCR 7.101(P) in an added amount equal to the actual costs cited in the above paragraph, or in an amount that this Honorable Court deems equitable and just.