

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-16439

Issue No: 2020

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 3, 2009

St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on March 3, 2009.

ISSUE

Whether the claimant had control over excess assets that rendered her ineligible for Medicaid?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant was receiving Medicaid benefits.

(2) On 12-27-07, claimant's Medicaid benefits were re-evaluated using information obtained earlier in the year that purported to show that claimant had a bank account with assets in excess of \$5,000 dollars.

(3) Claimant's Medicaid benefits were subsequently cut off.

(4) Claimant requested a hearing on 2-25-08, alleging that the assets in the account in question were not hers, nor were they usable by her.

(5) The account in question was a Uniform Gift to Minors Act account in the name of her grandson, [REDACTED]

(6) This type of account is governed in Michigan by the Uniform Transfers to Minors Act of 1998, MCL 554.521 et seq.

(7) A hearing was held on 3-3-09.

(8) Claimant requested a record extension of 7 days to secure bank records that would allegedly show that any monies in the UGMA account were not usable by claimant. This extension was granted.

(9) On 3-10-09, the record was closed; the claimant had not returned any records detailing the nature of the account.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM) and Reference Tables (RFT).

With regard to the Medicaid eligibility determinations, the State of Michigan has set guidelines for assets, which determine if a Medicaid group is eligible. An asset is cash, any other personal property and real property. Personal property is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles). PEM 400

Countable assets cannot exceed the applicable asset limit; however, not all assets are countable. In order to be countable, an asset must be available; that is, someone in the asset group must have the legal right to use or dispose of the asset. If countable assets do exceed the applicable asset limit for the program in question, then the claimant is rendered ineligible for the program. PEM 400

Claimant alleged that she never had the legal right to dispose of or use the monies in the account in question. Claimant had been given one week with which to secure proof that the account in question was not in control of the claimant. As the claimant never returned proof, the undersigned must proceed forward using all available evidence. Fortunately, the evidence of record is more than sufficient to render a decision.

Department Exhibit 3 is an account statement that shows information about the account in question. The account type is listed as “UGMA”, or as more commonly known, a Uniform Gift to Minors Act account. This type of account was governed by the Michigan Uniform Gift to Minors Act (MCL 554.451 et. seq.) until 1998, when the act was replaced by the Michigan Uniform Transfer to Minors Act (MCL 554.521 et. seq.).

According to law, these accounts are specific types of accounts that were established as a simple way for a minor to own securities without requiring the services of an attorney to prepare trust documents or the court appointment of a trustee. The terms of these accounts are established by a state statute instead of a trust document. The Uniform Transfer to Minors Act is similar, but also allows minors to own other types of property, such as real estate, fine art, patents and

royalties, and for the transfers to occur through inheritance. UTMA is slightly more flexible than UGMA.

Regardless of their origins, the most important aspect of these types of accounts for our purposes is that the transfers made to an account of this type are considered an **irrevocable** transfer to the minor in whose name the account is registered; in other words, any money in the account is legally considered the property of the minor, with the minor gaining full access to the money upon attainment of the age of majority.

While the named custodian has theoretical access to the account, the custodian, whomever that may be, may not use the money to benefit themselves. Any money that is withdrawn from the account may only be used in accordance with the Act. The Act limits these uses in a way similar to a trust, with the custodians assuming the role of a quasi-trustee.

Thus, while the claimant's name was on the account, the claimant, by the very nature of the type of account, was prohibited from accessing the money within; her role was analogous to that of a trustee, with claimant's grandson acting as the beneficiary of the trust. The money in question never belonged to the claimant, and she certainly never had the legal right to dispose of or use the money. The money therefore was not a countable asset, and should never have been factored into the Department's decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to include claimant's grandson's UGMA account as a countable asset in determining claimant's continuing Medicaid eligibility was in error.

Accordingly, the Department's decision is, hereby, REVERSED.

The Department is ORDERED to restore claimant's Medicaid eligibility retroactive to the negative action date and start the processing of any medical bills that accrued during that time.

/s/ _____
Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 17, 2009

Date Mailed: March 18, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

RJC/cv

cc: T. Jackson
St. Clair County DHS / DHS-1843
J. Goetschy
M. Best
J. Rogers
R. J. Chavez
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