

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED],
c/o [REDACTED]
Claimant

Reg. No.: 2008-21353
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 8, 2009
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on June 8, 2009. The Claimant's appointed Conservator and representative, [REDACTED] of [REDACTED], appeared and testified. [REDACTED] and [REDACTED] appeared on behalf of the Department.

ISSUES

Whether the Department properly denied the Claimant's February 26, 2008 Medical Assistance ("MA") application due to excess 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 November 13, 2007, Family Options Services was appointed Successor Conservator of the estate for the Claimant. (Exhibit 1)

2. The Conservator submitted an application for Medical Assistance benefits on behalf of the Claimant on February 26, 2008.
3. The Conservator also submitted a Prepaid Funeral Agreement (“Agreement”) and an Irrevocable Funeral Contract (“Contract”) which were not signed or dated by the Funeral Director/Seller. (Exhibits 3, 4)
4. On March 11, 2008, the Department sent a Verification Checklist to the Conservator/Claimant requesting in part, a signed and dated copy of the pre-paid funeral agreement and an Irrevocable Funeral Contract Certification. (Exhibit 2)
5. On March 17, 2008, a copy of the previously submitted Agreement and Contract were provided to the Department. (Exhibits 5, 6)
6. On April 10, 2008, the Department received a facsimile from the funeral home of a signed and dated Agreement and Contract. (Exhibits 7, 8)
7. The Contract (DHS-8A) was not signed by the purchaser/beneficiary, although the previously submitted copy contained a signature. (Exhibit 8)
8. On April 11, 2008, the Medical Assistance application was denied due to excess assets.
9. On May 7, 2008, the Department received the Claimant’s written request for hearing.

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, formally known as the Family Independence Agency, 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”).

Clients must cooperate with the local office in determining initial and ongoing eligibility to include the completion of the necessary forms. PAM 105 Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. PAM 130 If the client cannot provide the verification despite a reasonable effort, the time limit should be extended at least once. *Id.* If neither the client nor the Department is able to obtain verification despite reasonable effort, the Department should use the best available information. *Id.* If no evidence is available, the Department should use its best judgment. *Id.* Client's are allowed 10 calendar days (or other time limit specified in policy) to provide the requested verifications. *Id.* Before determining eligibility, the client must be afforded a reasonable opportunity to resolve any discrepancy between statements made and information obtained from another source. *Id.* Verifications are considered timely if received by the due date. *Id.*

In addition to income, assets must be considered in determining MA eligibility. PEM 400 Assets are cash and any other personal and/or real property. *Id.* Countable assets must be available and cannot exceed the applicable asset limit. *Id.* Available means that someone in the asset group has the legal right to use or dispose of the asset. *Id.* A funeral plan refers to a prearrangement for cemetery and/or funeral goods/services and are normally established using a burial fund, purchase of burial space, prepaid funeral contract, or through life insurance funding. *Id.* A prepaid funeral contract is a contract requiring payment in advance for funeral goods or services and may be revocable or irrevocable. *Id.*; PAM 805 Funds in an irrevocable prepaid funeral contract are unavailable thus are not counted. *Id.* Funds in a Michigan contract (DHS-8A, Irrevocable Funeral Contract Certification) certified irrevocable are excluded. *Id.* PAM 805 further provides that a prepaid funeral contract must be certified irrevocable and must meet all the following:

1. The contract purchaser requests via DHS-8A that the contract be certified irrevocable.
2. The contract purchaser is the beneficiary, alive, and a FIP/SDA/MA/SSI applicant or recipient. (Note: Someone else may act as purchaser for a living beneficiary if the beneficiary's own money is used.)
3. The department has a copy of the contract
4. The principal value is not over the allowable principal value.
5. Sections 1 and II of the DHS-8A are properly completed.
6. Ten or more business days have passed since all parties signed the contract.

In this case, the Department initially received a copy of the pre-paid funeral agreement and DHS-8A however, although the documents were signed but the Conservator, the agreements were not signed by the funeral director. On April 10, 2008, the day before the application denial, the Department received from the funeral home a signed agreement however, this time the faxed copy did not contain the signature of the purchaser/beneficiary. As a result, the Department did not exclude the asset which resulted in a denial of the application due to excess assets. There was no evidence that the Conservator/Claimant was failing to cooperate or otherwise non-compliant. At the time of the denial, based upon the best available information, an irrevocable pre-paid funeral agreement existed and should not have been a countable asset. Under these facts, the Department's actions are not upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department improperly included the irrevocable pre-paid funeral agreement as a countable asset when it determined the Claimant's eligibility.

Accordingly, it is ORDERED:

1. The Department's April 11, 2008 eligibility determination is REVERSED.
2. The Department shall re-open and re-process the Claimant's February 26, 2008 application in accordance with department policy.

3. The Department shall notify the Conservator of the determination.
4. The Department shall supplement for any lost benefits the Claimant was otherwise entitled to receive, if otherwise eligible and qualified, in accordance with department policy.

/s/

Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/09/09

Date Mailed: 06/09/09

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 receipt 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.

CMM/jlg

cc:

