

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: 2008-24863

Issue No: 2020

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 3, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 3, 2009. The Claimant was represented by [REDACTED] of the [REDACTED] law firm. [REDACTED] also appeared and testified on behalf of Claimant. Charlotte Metcalf, FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly closed Claimant's Medicaid Assistance ("MA") case effective 6/3/08 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. Claimant was a MA recipient. Claimant is incapacitated and his conservator/guardian is [REDACTED] of the [REDACTED] law firm.

2. On 7/27/1992, Claimant entered into a prepaid funeral agreement for the price of \$1,600.00 with the goods and services to include:
 - a. Removal from place of death
 - b. Care and preparation of the body
 - c. Limited visitation one evening (6-9 p.m.)
 - d. Funeral service and funeral home & ending at funeral home
 - e. Minimum casket
 - f. 4% sales tax
 - g. Clergy honorarium
 - h. Filing of permits and death certificate(Exhibit 1, pp. 1-2). This contract was certified as irrevocable by DSS on 10/13/92. (Exhibit 2).
3. On 8/10/93, an additional prepaid funeral agreement was purchased for \$200.00 to include men suits, men undergarments, 4% sales tax and clergy honorarium. (Exhibit 3, pp. 1-2).
4. On 11/12/04, a third prepaid funeral agreement was purchased for \$425.00 to include Clergy Honorarium, Flowers and Newspaper. (Exhibit 4).
5. Additional funds were added to the prepaid funeral agreement as follows:
 - a. \$400.00 added 2/28/05 (Exhibit 5, pp. 1-5);
 - b. \$350.00 added 7/29/05 (Exhibit 6, pp. 1-6);
 - c. \$200.00 added 4/29/05 (Exhibit 7, pp. 1-5);
 - d. \$750.00 added 11/8/05 (Exhibit 8, pp. 1-6);
 - e. \$200.00 added 11/30/05 (Exhibit 9, pp. 1-7);

These additions were paid by check directly to the funeral home and then placed into escrow.

6. An additional contract was entered into between the conservator and the funeral home on March 9, 2007 rolling in all the previous payments for a total funeral purchase price of \$4,125.00. (Exhibit 10). The contract included the following:
 - a. \$1,735.00 - for funeral home services, embalming and preparation of body;
 - b. \$225.00 – Transfer of Remains to funeral home.
7. On March 9, 2007, the Claimant requested that the contract be certified as an irrevocable funeral contract (and, therefore, be treated as unavailable assets) pursuant to PAM 805. (Exhibit 11).
8. On 4/22/08 and 5/7/08, the Department sent Claimant a verification checklist requesting asset information as well as a copy of the funeral agreement for a guaranteed price. (Exhibit 12 – previously marked as Exhibit 1).
9. The Department did not receive any contracts from 3/9/07 showing that the funeral contract was a guaranteed price.
10. Claimant's bank accounts revealed \$1,263.16 in a savings account and \$637.21 in a checking account. (Exhibit 13, pp. 1-2)
11. The Department mailed excess asset notice to the claimant's guardian on 5/20/08 and the Department closed the Claimant's MA case on 6/3/09 due to excess assets.
12. Claimant requested a hearing on June 23, 2008 contesting the department's determination to close his MA case.

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”).

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. PEM 105, p. 1. Medicaid is also known as Medical Assistance (“MA”). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for SSI recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP related or SSI related. *Id.* To receive MA under an SSI related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive MA under FIP related categories. *Id.*

Clients must cooperate with the local office in determining initial and ongoing eligibility to provide verification. PAM 130, p. 1. The questionable information might be from the client or a third party. Id. The Department can use documents, collateral contacts or home calls to verify information. Id. The client should be allowed 10 calendar days to provide the verification. If the client cannot provide the verification despite a reasonable effort, the time limit to provide should be extended at least once. PAM 130, p.4; PEM 702. If the client refuses to provide the information or has not made a reasonable effort within the specified time period,

then policy directs that a negative action be issued. PAM 130, p. 4. Before making an eligibility determination, however, the department must give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. PAM 130, p. 6.

A limited amount of certain types of assets a person has clearly designated to pay for burial expenses are excluded as a burial fund. Generally, up to \$1500 can be excluded as long as the expenses are related to preparing a body for burial and any services prior to burial. PEM 400, p. 27. In addition, funds in an **irrevocable** prepaid funeral contract are unavailable and thus are excluded from assets for purposes of MA. PEM 400, p. 31. A revocable contract, on the other hand, can be terminated by the purchaser and the money refunded. The refund might be less than the contract's total value. A contract is revocable unless certified irrevocable. PAM 805, p. 2. For program eligibility purposes, an irrevocable contract means money in the contract fund, including interest or dividends, is permanently unavailable to the purchaser/beneficiary. Id.

A guaranteed price contract fixes the price to be charged for funeral goods and services listed in the contract. A non-guaranteed price contract states clearly that the price of listed goods and services might fluctuate. Actual costs at delivery might be more or less than the amount in the contract fund. PAM 805, pp. 1-2.

The absolute maximum for the principal value for a contract to be certified irrevocable is \$11,450.00 as of June 1, 2009. PAM 805 p. 4. Irrevocable is defined as "Unable to cancel or recall; that which is unalterable or irreversible." West's Encyclopedia of American Law, 2nd edition, 2008.

In the present case, the first question to be addressed is whether the contract was a guaranteed price and was irrevocable. The original funeral contracts entered into on 7/27/92, 8/10/93 and 11/12/04 are prepaid and titled “guaranteed price agreement.” There is a section contained in each contract, however, that deals with cancellation of the Agreement and reads as follows:

This agreement may be cancelled by the Buyer either before or after the death of the Beneficiary. If the Buyer is also the Beneficiary and has died, the Agreement may also be cancelled by the person or persons legally entitled to make funeral arrangements for the Buyer. If the Agreement is cancelled, the Buyer, or . . . the Buyer’s estate, shall be entitled to a refund of 90% of the principal and income in the escrow account which remains after payment of administrative or escrow fees. (Exhibit 3, p. 1).

The back side of the contract goes on:

Cancellation Before the Death of the Beneficiary: This Agreement may be cancelled by the Buyer by providing a written notice of the cancellation to the Funeral Director 30 days before the effective date of the cancellation.

(Exhibit 3, p. 2). Therefore, these contracts did not limit Claimant’s right to cancel the agreement.

Furthermore, although the original contracts are titled “guaranteed price”, the evidence suggests otherwise. The original contract was to include care and preparation of body and removal from place of death plus additional services for the price of \$1600.00. (Exhibit 1). The 3/9/07 contract, however, charges \$1,735.00 for funeral home services, embalming and preparation of the body and an additional \$225.00 for transfer of body to the funeral home. (Exhibit 11). In the 8/10/93 and 11/12/04 contracts, additional funds were added and new services were purchased that were above and beyond the original services contracted. However, the funds added on 2/28/05, 7/29/05, 4/29/05, 11/8/05 and 11/30/5 were rolled into the 3/9/07 contract which came up with new prices for the same services. In the most recent contract, the Claimant is being charged more money for the same services that he originally contracted for. A

guaranteed or fixed price does not change over the passage of time as this contract did, rather it remains the same or guaranteed.

Finally, if the Claimant's funds were paid into an irrevocable trust for the sole purpose of paying for the funeral expenses, then the funeral contract could be considered irrevocable as well. The Claimant's representative indicated that the funds were rolled into a trust titled the "Forethought document." While the undersigned requested the actual trust documents, none were provided. Furthermore, all payments were made directly to the funeral home and then placed in escrow which indicates that the funds were not paid into an irrevocable trust account.

Accordingly, the Administrative Law Judge finds that under the legal definition of irrevocable, as well as the definitions contained in PEM 400 and PEM 805, the original contract is revocable because it can be cancelled. It is this Administrative Law Judge's opinion, therefore, that the original contract should not have been certified as irrevocable.

Furthermore, the most recent 4/9/07 contract is also considered revocable because there is nothing in the document itself to indicate that the contract is either a guaranteed price or irrevocable.

While the Claimant has limited income and assets, Claimant's assets are currently over the limit for MA, so the Department's decision to terminate benefits is AFFIRMED.

Certainly, Claimant is entitled to enter into a prepaid, guaranteed price, irrevocable funeral contract, even with the current funeral home, and reapply for Medicaid benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department acted in accordance with department policy when it terminated the Claimant's MA benefits effective 6/3/09 for excess assets.

Accordingly, it is ordered:

1. The Department's determination is AFFIRMED.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/02/09

Date Mailed: 07/08/09

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 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.

JV/dj

cc:

