

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],  
Deceased.

Reg. No: 2008-26677  
Issue No: 2021  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 16, 2009  
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 telephone hearing was held on July 16, 2009. Claimant was represented by [REDACTED].

ISSUE

Did the department properly deny claimant's March 20, 2008 Medicaid (MA)/retro-MA application?

FINDINGS OF FACT

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

(1) On March 20, 2008, claimant's authorized representative filed an MA/retro-MA application on her behalf seeking MA coverage retroactive to December 2007 due to unpaid hospital expenses she incurred from that month through March 2009, when she died (DOD: 3/11/09)(Department Exhibit #1, pgs 1-9).

(2) On April 25, 2008, the department notified claimant's authorized representative this application was denied for each month MA had been requested based on countable assets in excess of the [REDACTED] monthly asset limit (Department Exhibit #1, pg 10).

(3) The department took into consideration claimant's [REDACTED] with countable, available early cash withdrawal values of [REDACTED] in December 2007, [REDACTED] in January 2008, [REDACTED] in February 2008 and [REDACTED] in March 2008 (Department Exhibit #1, pg 42 and Client Exhibit C, pg 5).

(4) Additionally, the department reviewed three motor vehicles claimant owned, specifically a [REDACTED], a [REDACTED] and a [REDACTED] (Department Exhibit #1, pgs 30, 32 and 36).

(5) The department completely disregarded the [REDACTED] fair market value [REDACTED] when determining whether claimant's countable assets exceeded the [REDACTED] monthly asset limit despite the fact a verification from the lien holder ([REDACTED]) indicates she and her husband paid off this truck lien in full on November 1, 2005 (Department Exhibit #1, pgs 33-35).

(6) Additionally, the department completely disregarded the [REDACTED] because they established through NADA verification this car's fair market value ([REDACTED]) was greater than claimant's [REDACTED] fair market value ([REDACTED]), and the department's policy at BEM Item 400, pg 23, permits the department to exclude the vehicle with the highest value as established by acceptable sources including NADA, per current policy item BEM 400, pg 36 (See also Client Exhibit B, pgs 1 and 2).

(7) In each month at issue (12/07-3/08), the verified values of claimant's [REDACTED] when combined with the verified value of the only car the department counted ([REDACTED])

exceeded the MA asset limit (Department Exhibit #1, pgs 11-13, 16-18, 21-23 and 26-28)(See also Finding of Fact #3 and #6 above).

(8) On July 22, 2008, the department received a hearing request disputing their MA/retro-MA application denial.

(9) Claimant's hearing was held on July 16, 2009, four months after she died with representation provided by her former authorized representative, who filed the hearing request on claimant's behalf while she was still alive (See also Finding of Fact #1 and #2 above).

### 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).

The applicable departmental policy states:

#### **Assets Defined**

**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 (examples: currency, savings accounts and vehicles). PEM, Item 400.

#### **SSI Related MA**

All types of assets are considered for SSI-related MA categories. PEM, Item 400, p. 2.

## **MA ASSET ELIGIBILITY**

### **LIF, G2U, G2C, AMP and SSI-Related MA Only**

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories. PEM, Item 400, p. 3.

**Note: Do not deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.**

Use the special asset rules in PEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and PEM 106 for the definition of waiver patient.

Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. PEM 400.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. PEM, Item 400, p. 4.

### **SSI-Related MA Asset Limit**

#### **SSI-Related MA Only**

For Freedom to Work (PEM 174) the asset limit is \$75,000. IRS recognized retirement accounts (including IRA's and 401(k)'s) may be of unlimited value.

For Medicare Savings Program (PEM 165) and QDWI (PEM 169) the asset limit is:

- . \$4,000 for an asset group of one
- . \$6,000 for an asset group of two

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one
- . \$3,000 for an asset group of two. PEM, Item 400, p. 4.

Assume an asset is available unless evidence shows it is **not** available. PEM, Item 400, p. 6.

## **RETIREMENT PLANS**

### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

This section is about the following types of assets:

- . Individual retirement accounts (IRAs)
- . Keogh plans (also called H.R. 10 plans)
- . 401k plans
- . Deferred compensation
- . Pension plans
- . Annuities--An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. PEM, Item 400, pp. 14-15.

### **Retirement Plan Value**

#### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

The value of these plans is the amount of money the person can currently withdraw from the plan. Deduct any early withdrawal penalty, but not the amount of any taxes due.

Funds in a plan are **not** available if the person must quit his job to withdraw any money. PEM, Item 400, p. 15.

## **VEHICLES**

### **SSI-Related MA Only**

A **vehicle** is a device used to transport people or goods. Vehicle includes passenger cars, trucks, motorcycles, motorbikes, trailers, campers, motor homes, boats and all-terrain vehicles. PEM, Item 400, p. 21.

### **Vehicle Value**

#### **SSI-Related MA Only**

The value of a vehicle is its equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision.

Liens must be on record with the Secretary of State or other appropriate agency. PEM, Item 400, p. 22.

**VEHICLE EXCLUSIONS**

**SSI-Related MA Vehicle Exclusion**

**SSI-Related MA Only**

Exclude one motorized vehicle owned by the asset group. If the asset group owns multiple motorized vehicles:

- . use the "EMPLOYMENT ASSET EXCLUSIONS" first, then
- . from any remaining motorized vehicles, exclude the one with the highest equity value. PEM, Item 400, p. 22.

The credible documentary evidence of record clearly establishes claimant owned countable assets in excess of MA program limits in her application month and in all the disputed retro-months. Furthermore, claimant's assets were properly submitted and properly verified during application processing. As such, no basis exists between application filing and application denial which would support a reversal of the department's denial action.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's March 20, 2008 MA/retro-MA application.

Accordingly, the department's action is AFFIRMED.

/s/ \_\_\_\_\_  
Marlene B. Magyar  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 10, 2010

Date Mailed: May 11, 2010

**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.

MBM/db

cc:

