

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: 2008-27256
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 11, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 June 11, 2009.

ISSUE

Are prior asset eligibility determinations affected by subsequent contrary DHS policy changes?

FINDINGS OF FACT

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

- (1) Negative action: Medicaid termination on July 2, 2008 was based on excess assets (rental property) per PEM 400, effective July 1, 2008.
- (2) Claimant's Medicaid application on March 1, 2006 did not have a rental property asset limitation under PEM 400, effective before March 1, 2006.

(3) Claimant's same rental property exceeds changed asset limitation of \$6,000 under PEM 400, effective July 1, 2008.

(4) Claimant claims that he should remain asset eligible under PEM 400 effective before March 1, 2006 regardless of subsequent policy changes.

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).

Facts above are undisputed.

Both parties agree that if claimant's rental property is still subject to the past PEM 400 effective before March 1, 2006, she remains non-excess asset eligible. But, if she is subject to same subsequent policy changes, effective July 1, 2008, the rental property exceeds the asset limitation.

Therefore, it is a matter of policy interpretation, whether a policy change applies to all current and future recipients.

The claimant could not cite any DHS policy authorities supporting this position.

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280.

Under the rules of policy interpretation, when a policy is changed, it applies to all current and future recipients, unless otherwise provided in the policy.

Therefore, this ALJ is not persuaded that claimant's position is supported by DHS policy requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that prior asset eligibility determinations are affected by subsequent, contrary DHS policy changes.

Accordingly, Medicaid termination based on excess assets is UPHELD.

/s/

William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 9, 2009

Date Mailed: July 9, 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 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.

WAS/tg

2008-27256/was

cc:

