

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: 2008-15636
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2008
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 November 19, 2008.

ISSUE

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance (MA)?

FINDINGS OF FACT

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

(1) During February 2008, claimant was receiving MA. On February 27, 2008, claimant reported that her divorce was finalized and she was awarded real property and stock in the settlement. Department A, page 1.

(2) February 27, 2008, the department prepared an MA budget. Claimant's assets consisted of non-homestead real property with SEV of [REDACTED] and total countable value of

██████████ Claimant also owns two checking accounts valued at ██████████ and ██████████. Total countable assets were ██████████. Claimant had excess assets to qualify for MA. Department Exhibit A, pages 1-6.

(3) February 27, 2008, the department sent claimant written notice that her MA would end due to excess assets.

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).

Department manuals provide the following policy statements and instructions for caseworkers:

Assets must be considered in determining eligibility for FIP, SDA, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA categories and AMP.

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.

Countable assets cannot exceed the applicable asset limit.

You must consider the following to determine whether, and how much of, an asset is countable.

Availability:

An asset is countable if it meets the availability tests and is not excluded.

Asset limits are as follows:

LIF Only

- \$3,000

G2U and G2C

- \$3,000

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 Programs (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.

An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset.

Assume an asset is available unless evidence shows it is not available.

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.

At application, do not authorize MA for future months if the person has excess assets on the processing date.

If an ongoing MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients will be penalized for divestment.

NON-SALABLE ASSETS

SSI-Related MA Non-Salable Assets

Give the asset a \$0 value when it has no current market value as shown by one of the following:

- Two knowledgeable, appropriate sources (example: realtor, banker, stock broker) in the owner's geographic area state that the asset is not salable due to a specific condition. This applies to any assets listed under:

HOMES AND REAL PROPERTY

- In addition, for homes, life leases, land contracts, mortgages, and any other real property, an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. The asset becomes salable when a reasonable offer is received. Count an asset that no longer meets these conditions. For applicants, an active attempt to sell must have started at least three months prior to application and must continue until the property is sold. For recipients, the asset must have been up for active sale at least 30 days prior to redetermination and must continue until the property is sold. An "Active Attempt to Sell" means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspapers, and or is currently listed with a licensed realtor.

Program Eligibility Manual (PEM) 400

P.A. 280 of 1939, as amended

Social Security Act, Sections 1902(a)(10); (r)(2)

Deficit Reduction Act of 2005

42 CFR 435.840 - .845

MCL 400.106

In this case, claimant asserts that her property has no value and is for sale, but has not sold. Claimant does not have the property listed with a realtor nor did she provide any objective evidence to establish the value of the property is not as stated on the State Equalized Value statement. Accordingly, the department has met its burden of proof that the value of claimant's real estate is available, saleable and has value of [REDACTED]. This figure exceeds the allowable

limit for claimant to qualify for MA. Therefore, the department's action must be upheld.

Finding of Fact 1-3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services did comply with department policy when it determined claimant's eligibility for MA.

Accordingly, the department's action is **HEREBY UPHELD**.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 14, 2009 _____

Date Mailed: April 15, 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.

JAB/db

cc:

