

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: 2008-17610  
Issue No: 2021  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 8, 2009  
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. 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 January 8, 2009. Claimant was represented by attorney [REDACTED].

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) On or about [REDACTED], claimant was receiving MA while living in long term care. On or about [REDACTED], the department had reason to re-evaluate claimant's eligibility for MA and determined that, due to a policy change that occurred in [REDACTED] formerly excluded real property was now included. Claimant had excess assets to qualify for MA.

(2) Claimant rents non-homestead property to a farmer for payment of [REDACTED] the crop proceeds. Department A, Exhibit 4. Claimant's only expense related to the rental property is her taxes. SEV for the property is [REDACTED]. Department A, Exhibit 3.

(3) [REDACTED] the department sent claimant written timely notice that her assistance would terminate due to excess assets. The proposed action went into effect as scheduled.

### 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:

Countable assets cannot exceed the applicable asset limit. 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. The asset limit for SSI-related MA, asset group of 1 is \$2000.

Not all assets are counted.

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

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

- 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.

Real property is land and objects affixed to the land such as buildings, trees, and fences. The value of real property is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. To determine the value of real property and mobile homes, use:

- Deed, mortgage, purchase agreement or contract
- State Equalized Value (SEV) or current property tax records multiplied by two (2).
- Statement of real estate agent or financial institution
- Attorney or court records
- County records

Liens must be filed with the registrar of deeds or other appropriate agency.

The asset group's homestead is excluded. A Homestead that any owner formerly lived in is excluded if the owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.

Employment related assets such as farmland and the building where a business is located might be excluded. Exclude employment assets that are required by a person's employer or produce income directly through their use. Such assets remain excluded when a person is unemployed only if the person intends to return to that type of work.

Exclude up to \$6,000 of income producing real property if it produces annual countable income of at least 6% of the asset group's equity in the asset. Countable income is total proceeds minus actual operating expenses.

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 owns non-homestead property that she rents to a farmer in exchange for payment of [REDACTED] share of the proceeds of the crop. She has rental expense consisting of the real estate taxes on the property. The value of the property is [REDACTED]. [REDACTED] If the property produces annual countable income that equals at least [REDACTED] of the claimant's equity in the land, up to [REDACTED] of its value may be excluded. Even after [REDACTED] of the equity is excluded, claimant has remaining countable value of [REDACTED] which exceeds the asset limit of [REDACTED] for an SSI-related group of 1. Finding of Fact 2; PEM 400.

At hearing, claimant representative asserted that it is the department's policy that once property is excluded it remains excluded as long as the case is open regardless of department policy changes. The representative asserted that a department policy expert communicated said policy to him and the [REDACTED] and [REDACTED] section of the [REDACTED]. No department policy citation was asserted. After careful examination of department policy, the Administrative Law Judge can find no policy document to support representative's and/or policy expert's assertion. Accordingly, regardless of the source of the information, a preponderance of the evidence does not exist and claimant's eligibility must be determined using current department policy.

At hearing, claimant representative asserted that claimant's land should be considered an employment related asset as claimant is employed as a farmer. The evidence of record establishes that claimant is not a farmer, any more than a person who rents a car to another is engaged in driving or a person who rents an office to a doctor is engaged in the practice of medicine. Accordingly, a preponderance of the evidence establishes that claimant has income producing real property and not employment related property. PEM 400.

