

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.: 2008-21475  
Issue No.: 2014  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
July 27, 2009  
Oakland County DHS (4)

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 July 27, 2009. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared as an expert witness and trustee on behalf of Claimant. [REDACTED], ES and [REDACTED], FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly denied Claimant's Medicaid Assistance ("MA") Long Term Care benefits effective 9/1/07 – 2/1/08 based on divestment due to Claimant's pooled trust contribution not meeting the guidelines for an Exception B trust?

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.

2. Claimant is a disabled individual. This was acknowledged by the Department at the hearing.
3. On 9/25/07, Claimant's son, as Power of Attorney, joined Claimant in a pooled trust through the Michigan Trust for the Disabled. (Exhibit 1, pp. 9-25). Claimant paid \$32,995.64 into the trust. (Exhibit 1, p. 26).
4. The Department, relying on a 12/18/07 Memo from [REDACTED], Department Analyst, ruled that the payment to the trust was a divestment as PEM 401 requires that an individual be under age 65 to qualify for disability and, therefore, for an Exception B trust. (Exhibit 1, p. 7).
5. As a result, the Department denied Claimant's Medicaid Assistance ("MA") Long Term Care benefits effective 9/1/07 – 2/1/08.
6. At the hearing, the Department agreed that the only issue is whether a Claimant must be under the age of 65 to qualify for an Exception B Trust .
7. Claimant requested a hearing on January 2, 2008 contesting the department's determination to consider the transfer to the pooled trust a divestment and deny Claimant MA Long Term Care benefits from 9/1/07 -2/1/08.

#### 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").

Under Department policy, all assets and resources of Medical Assistance (“MA”) applicants must be counted in determining eligibility under the program. An individual may not be eligible for MA if the countable assets and resources are in excess of certain limits. PEM 400. Trust accounts may be considered assets under the MA program and the value of those assets counted in making a determination of eligibility. PEM 410, pp. 8-9. However, certain trusts are excluded from this asset determination. In an “Exception B” pooled trust, assets are not counted in determining eligibility, although income a MA recipient receives from the trust is considered. PEM 401, pp. 7-8.

PEM 401 indicates that a Medicaid trust (requiring divestment analysis) is a trust that meets the following conditions:

1. The person whose resources were transferred to the trust is someone whose assets or income must be counted to determine MA eligibility . . . or a divestment penalty.
2. The trust was established by the person or someone acting on the person’s behalf.
3. The trust was established on or after August 11, 1993.
4. The trust was not established by a will
5. The trust is not described in Exception A – Special Needs Trust or Exception B – Pooled trust. PEM 401, p. 5.

There are two exceptions to trusts requiring a divestment analysis. These exceptions are based upon 42 U.S.C. §§1396p (d)(4)(A)&(C). The first exception is Exception A, Special Needs Trust which requires that a person be under the age of 65 when money is first paid into the trust. PEM 401, p. 6.

The Exception B, Pooled Trust, on the other hand, must meet the following conditions:

1. The trust must be unchangeable with regard to the provisions that make it an Exception B, Pooled Trust.

2. The trust contains the resources of a person who is disabled.
3. The trust is established and managed by a nonprofit association.
4. A separate account is maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust pools these accounts.
5. Accounts in the trust are established for the benefit of persons who are disabled (not blind) per PEM 260.
6. The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the state the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

While age is specifically referenced to in the definition of an Exception A trust, it is not referenced at all in the definition of the Exception B Trust. In fact, the only reference to age in the Exception B, Pooled Trust is located in PEM 401, p. 8 where it says "transfers to an "Exception B, Pooled Trust" by a person age 65 or older might be divestment. Caseworkers are instructed to do a complete divestment determination if the person is a "Penalty Situation" per PEM 405." PEM 405 reads: "Transfers to a trust established "SOLELY FOR THE BENEFIT OF" a disabled (see PEM 260) person under age 65 are not divestment. Which infers that it might be considered divestment if it is transferred *over* the age of 65.

In the present case, the Claimant transferred funds from a bank account into an irrevocable pooled trust account. The trust conforms to standards of an "Exception B, Pooled Trust" as set forth in policy cited above. Therefore, the assets are not countable toward determining eligibility and transfers to the trust are not considered "divestment" under the Medical Assistance program. The Department's position, however, is stated in a memo dated April 30, 2009 which reads in part:

This trust does not meet the guidelines for an Exception B Trust. PEM 401, p. 6 requires that the person must be disabled according to PEM 260, which specifies that the individual must be under the age of 65. Loretta Thomas is over the age of 65 (she is 91 years old, DOB 3/6/1916). This is divestment.

(Exhibit 1, p. 7).

The Department argues that in order to have an “Exception B Trust” the trust must be for a “disabled person” and that Claimant is not considered “disabled” per PEM 260 since she is over the age of 65. Therefore, Claimant “divested” the income when the transfer was made and Claimant is subject to a divestment penalty. First, the Department acknowledged that the Claimant is disabled. Secondly, the Department’s analysis is flawed as PEM 260 does not indicate that a person is required to be under 65 years of age to be disabled.

A person who is eligible for Retirement, Survivors and Disability Insurance (RSDI) benefits based on his disability or blindness meets the disability or blindness criteria for Medicaid based MA in Michigan. PEM 260, p. 1. A person is disabled when all of the following are true:

1. He has a medically determined physical or mental impairment.
2. His impairment prevents him from engaging in any substantial gainful activity.
3. His impairment can be expected to result in death, or has lasted at least 12 consecutive months, or is expected to last at least 12 consecutive months.

PEM 260, p. 8; 42 U.S.C. 1382(c).

In the subject case, the Department agreed that Claimant was disabled and the sole issue causing Claimant’s trust contribution to be considered a divestment is that Claimant is over the age of 65. Nothing in the regulations or the United States Code indicates that Claimant needs to be over age 65 in order to qualify as disabled. In fact, SSR 03-3p: Policy Interpretation Ruling – Titles II and XVI: Evaluation of Disability and Blindness in Initial Claims for Individual Aged

65 or Older, specifically allows for the fact that there may disability claims for individuals aged 65 or older. Applying for disability over the age of 65 might be applicable for an individual who does not have enough work credits for retirement, qualified aliens or to determine state supplements in some States. Furthermore, Disability payments are automatically converted to retirement payments at the same rate once the individual reaches the full age of retirement, but that does not mean the individual is no longer disabled.

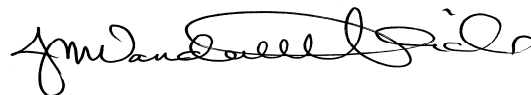
While PEM 405 appears to infer that transfers to a trust for the benefit of a disabled person over the age of 65 would be considered divestment, nothing in 42 U.S.C §1396p(d)(4)(C), 42 U.S.C. §1382(c), or PEM 260 refer to age in terms of determining disability. Accordingly, the Department's decision to apply a divestment penalty in determining Claimant's eligibility under the MA program did not conform to Department policy and is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Claimant's trust is an "Exception B, Pooled Trust" and that the Department erred in applying a Divestment penalty in disqualifying Claimant for benefits 9/1/07 -2/1/08 as Claimant does not need to be under 65 to be disabled per federal rules.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. It is further ordered that the Department shall reopen Claimant's MA case for the period of 9/1/07 - 2/1/08 and shall supplement the Claimant with any lost benefits she was otherwise entitled to receive



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

2008-21475/JV

Date Signed: 09/24/09

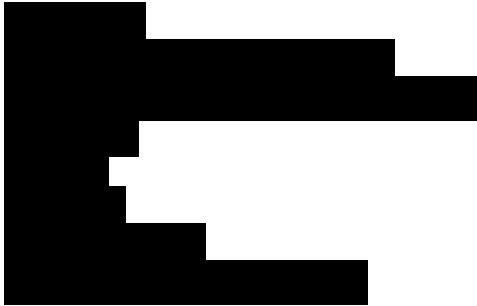
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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.

JV/jlg

cc:

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