

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: 2008-23685
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2009
Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 May 12, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant had excess assets for Medical Assistance (MA) benefits in June, 2008?

FINDINGS OF FACT

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

1. The claimant was receiving MA benefits under program "M" when the claimant's case became due for a yearly review.
2. During this review, the department discovered that the claimant has life insurance policies in his name (Department Exhibits #1 – 7).

3. The first policy through [REDACTED] indicates policy [REDACTED] is owned by [REDACTED] and was issued on [REDACTED] (Department Exhibit #3).

4. The chart of cash value for the [REDACTED] policy indicates that at the end of year nine ([REDACTED]), the cash value of the policy was [REDACTED] (Department Exhibit #4).

5. The other life insurance policy is provided through [REDACTED] [REDACTED] is shown as owned by [REDACTED] and was issued on [REDACTED] (Department Exhibit #5).

6. The chart of cash value for the [REDACTED] policy indicates that at the end of year seven ([REDACTED]) the cash value of the policy was [REDACTED] (Department Exhibit #6).

7. The department closed the claimant's MA-M case on June 3, 2008, for excess assets (Department Exhibit #8).

8. The claimant turned in a hearing request on June 18, 2008.

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 policy indicates:

ASSETS

DEPARTMENT POLICY

FIP, SDA, LIF, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, SSI-Related MA, and AMP

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.

- . “CASH” (which includes savings and checking accounts)
- . “INVESTMENTS”
- . “RETIREMENT PLANS”
- . “TRUSTS” PEM, Item 400.

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.

Overview of Asset Policy

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but **not** for another program. Some programs do **not** count assets (see “PROGRAMS WITH NO ASSET TEST” below).

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

- . Availability
 - .. see “AVAILABLE”
 - .. see “JOINTLY OWNED ASSETS”
 - .. see “NON-SALABLE ASSETS”

Exclusions. PEM, Item 400, p. 1.

An asset is countable if it meets the availability tests and is **not** excluded. PEM, Item 400, p. 1.

SSI Related MA

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

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 can be penalized for divestment (see PEM 405). 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.

AVAILABLE

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

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. PEM, Item 400, p. 6.

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

LIFE INSURANCE

SSI-Related MA

A **life insurance policy** is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. Pure Endowment Life Insurance Contracts pay out on a specific date in the future not just when the beneficiary dies, and

does not meet the definition of life Insurance for Medicaid. PEM, Item 400, p. 23.

Life Insurance Definitions

SSI-Related MA

Cash surrender value (CSV) - the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value or the cash value. PEM, Item 400, p. 24.

Policy owner - the person who has the right to change the policy. This is usually the person who pays the premiums. The policy owner and the insured can be different people. PEM, Item 400, p. 24.

Life Insurance Value

SSI-Related MA

A life insurance policy is an asset if it can generate a CSV. A policy is the policy owner's asset.

- . A policy's value is its CSV. A policy can generate a CSV, but have a CSV of zero. Such a policy is an asset with zero value.
- . Generally, term insurance does **not** have a CSV. Whole or straight life policies generate a CSV.
- . The CSV usually increases over time. A loan against a policy reduces its CSV. Pre-death payment of the death benefit might reduce the CSV. See "**Accelerated Life Insurance Payments**" in PEM 500 about the payments received.
- . CSV and FV are **not** the same thing. PEM, Item 400, p. 24.

Department policy indicates there is an asset test for SSI-related MA coverage. PEM 400. The asset limit for a group of one is \$2,000 for the claimant's MA case. PEM 400. A life insurance policy is a countable asset if it can generate a Cash Surrender Value (CSV). PEM 400. The life insurance policy is the policy owner's asset. PEM 400. The asset amount for a life insurance policy is the CSV. PEM 400.

In this case, the claimant does not dispute that he owned the life insurance policies in question. The CSV for each policy (at the time of the negative action) was [REDACTED] (See finding of fact 4 and 6). The total CSV for both policies was [REDACTED] This is more than the asset limit of \$2,000 for the claimant's MA case. Thus, the claimant did have excess assets to be covered under MA-M coverage.

It is noted that the claimant testified he has given these policies to his son sometime in the last few months. Thus, the claimant may re-apply and the department will consider the application based on the new circumstances, as long as the claimant provides proof of the ownership of the asset.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly terminated the claimant's MA-M coverage due to excess assets.

Accordingly, the department's actions are AFFIRMED. SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 19, 2009

Date Mailed: May 20, 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.

2008-23685/SLK

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

SLK/om

cc:

