

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████
Claimant

Reg. No. 2008-25513
Issue No. 2021
Case No. ██████████
Load No. ██████████
Hearing Date:
January 20, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on October 13, 2008. The Claimant was represented by her attorney ██████████.

ISSUE

Did the Department properly deny the Claimant's MA?

FINDINGS OF FACT

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

1. On May 5, 2008, the Department sent the Claimant a notice that her MA was to be cancelled after finding that her assets were above the \$2,000.00 limit.
2. The Claimant has an insurance funded funeral plan which is in trust. The Department included the funeral plan figure of ██████████ in budgeting assets.

3. On May 16, 2008, the Claimant, through her Authorized Representative (AR) filed for a hearing.

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 (formerly 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).

PEM 400 says in part:

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 400, pp. 4-5)

The Department specifically cites PEM 400, p. 30, which goes on to say:

Burial space items in a prepaid funeral contract must be identified and valued separately from non-burial space items to be excluded.

If the contract shows the purchase of a specified burial space at a specified price, determine whether such space is **held for** the client or member of the client's immediate family. If the space is held for the individual, determine if the contract is irrevocable or revocable. If irrevocable, it is not a resource. If the contract is revocable, it is an excludable resource. The burial space must continue to meet the **held for** criteria to be excluded.

Held For. A burial space is held for an individual when someone currently has:

- Title to and/or possesses a burial space intended for the individual's use (example: has title to a burial plot, owns a burial urn stored in the basement for his own use).
- A contract with a funeral service company for specified burial spaces for the individual's burial (i.e., an agreement

that represents the individual's current right to the use of the items at the amount shown).

Until the purchase price is paid in full, a burial space is **not held for** an individual under an installment sales contract or similar device if:

- . The individual does **not** currently own the space,
- . The individual does **not** currently have the right to use the space, and
- . The seller is **not** currently obligated to provide the space.

Until all payments are made on the contract, the amounts paid might be considered burial funds. See [“Burial Funds Exclusion”](#) above. (PEM 400, p 30).

The Department argues that “because it is an insurance funded agreement it is not exempt” and seems to be arguing that because the burial space has not been “held for” the Claimant it is also not exempt.

But see:

Life Insurance Funded Funeral

SSI-Related MA Only

A funeral plan can be funded using life insurance. A person purchases a life insurance policy and directs the proceeds to be used to pay for his funeral. In addition, the person might irrevocably/permanently transfer ownership of the policy to:

- . A trust, or
- . A funeral director who then transfers ownership to a trust. (PEM 400, p 30 - 31).

and:

Life Insurance Irrevocably Transferred

SSI-Related MA Only

Use the following when a person directs that the proceeds of a life insurance policy be used for his funeral **and** has **irrevocably** trans-

ferred ownership of the policy. Do this even if the person retains the right to change funeral providers, items or services.

Do **not** count the cash surrender value of the policy as an asset effective the month of transfer.

Do not count the funeral contract as an asset.

Do not apply policy in PEM 401, Trusts - MA.

Do not consider the ownership transfer as divestment when:

The proceeds are still to be used to pay the insured's funeral expenses, and

The value of the goods and services contracted for at least equals the cash surrender value of the insurance, and

The new owner **cannot** use the cash surrender value of the insurance policy for himself. (PEM 400, p. 31).

In the instant case, the insurance policy, and therefore its proceeds, have been irrevocably transferred to a trust. Therefore, they are exempt. The Department erred in finding them not exempt.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, REVERSES AND ORDERS the Department to refigure the Claimant's MA without counting the irrevocable transfer of the insurance policy as an asset.

/s/

Michael J. Bennane
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 23, 2009

Date Mailed: March 2, 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.

MJB

cc:

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