

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: 2008-25838
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2009
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 July 22, 2009. Claimant is in a nursing home and did not appear for the hearing. Claimant's daughter, [REDACTED] and [REDACTED], Attorney at Law, appeared and testified on claimant's behalf.

ISSUE

Did the department correctly deny claimant's Medicaid (MA) application in May, 2008, due to excess assets?

FINDINGS OF FACT

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

1. Claimant applied for MA on April 30, 2008. A bank statement provided by the claimant showed she had excess assets for MA so the department requested verification of current bank account balance be provided by May 11, 2008.

2. Upon receipt of additional information department determined that the lowest balance in claimant's [REDACTED] account during the month of April, 2008 was \$2,175.23. (Department's Exhibit 7).

3. On May 21, 2008, department denied claimant's MA application due to excess assets. Claimant requested a hearing on July 15, 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).

That the claimant's bank account was a countable asset is not in dispute. BEM 400. Also not in dispute is that the claimant's MA asset limit was \$2,000. Claimant had \$2,175.23 in her bank account as lowest balance during the month of April, 2008. Claimant's representatives however point out that a check for cost of nursing home care was written on April 29, 2008, but did not clear until May, 2008, so this check should be deducted from claimant's bank account balance for April, 2008. This Administrative Law Judge disagrees with claimant's interpretation of availability of the funds against which the check is written.

A check is an order from the drawer that the payor bank pay the payee a sum of money. 11 Am Jur 2d, Banks and Financial Institutions, Section 888. However, like most orders, this order can be countermanded at any time up until the time that the order has in fact, been executed--in the case of a check, by means of a "stop payment" order. 3 Michigan Civil

Jurisprudence, Banking and Money Affairs, Section 110. A stop payment order prohibits the payor bank from debiting the drawer's account. 11 Am Jur 2d, supra, Section 966. The funds in the account that otherwise would have been necessary to pay the check remain available to the drawer.

It is not until the payee presents the check for payment, the payor bank pays the payee, and the check "clears" the payor bank that the funds in the drawer's account that are necessary to pay the check are no longer "available" to the drawer.

Funds against which the check was written were therefore available and countable for the claimant as her asset until the time the check was presented and funds deducted from her bank account. Departmental policy states that an MA applicant must be below the asset limit for at least one day during the month being tested. BEM 400. In claimant's case, her lowest bank account balance for the month of April, 2008 was \$2,175.23, and she was therefore over the \$2,000 asset limit.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly denied claimant's MA application in May, 2008.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 4, 2010

Date Mailed: January 6, 2010

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 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.

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