

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: 2008-27820
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 21, 2009
Cass County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Thursday, May 21, 2009. The claimant was not present but was represented by his attorney, [REDACTED]
[REDACTED]

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA) based upon its determination that the claimant had 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) On February 7, 2008, the claimant's daughter and guardian submitted an application for the claimant for Medical Assistance with an authorization for [REDACTED] to represent the claimant. (Department Exhibit 7-8)

(2) Based on information provided, the department caseworker determined that the claimant had excess assets because he had a second car that was registered in his name at the Secretary of State that had a fair market value of \$1,170. (Department Exhibit 2-3)

(3) On March 11, 2008, the department caseworker determined that the claimant had excess assets because of the second vehicle of a 1997 Buick Regal with a fair market value of \$1,170 with no lien and a personal checking account balance of [REDACTED], which was greater than the \$2,000 allowed asset limit for MA eligibility. (Department Exhibit 3)

(4) Subsequently, the claimant's daughter submitted a copy of the title showing that he had signed it over to his ex-wife, but the title had not been taken to the Secretary of State. (Department Exhibit 2)

(5) On March 11, 2008, the department caseworker sent the claimant a notice that the claimant was not eligible for MA for January 1, 2008 through January 31, 2008 because the claimant's countable assets were more than the \$2,000 asset limit. (Department Exhibit 5)

(6) On June 30, 2008, the department received a hearing request from the claimant's authorized representative, contesting the department's negative action.

(7) During the hearing, the claimant's ex-wife stated that she took the title to the Secretary of State to transfer the title in February 2009. The reason she hadn't previously was because she was under the claimant's insurance and in November 2007 she got her own insurance policy. The claimant and his ex-wife were divorced in [REDACTED]. The claimant's ex-wife testified that the claimant signed over the car in the summer of 2007.

(8) During the hearing, the department caseworker testified that they just received the copy of the divorce decree today at the hearing. The claimant's ex-wife was awarded the 1997 Buick Regal as a part of the divorce decree that was signed on [REDACTED]. However, the department caseworker stated that the second vehicle was counted based on policy verification from the MA policy unit regarding the signed title where they stated that the vehicle is the property of the individual whose name is on the vehicle at the Secretary of State. The property remains the individual's property until it is officially transferred through the proper channels at the Secretary of State's office. (Claimant Exhibit 2-6)

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).

Assets must be considered to determine eligibility for SSI-Related Medical Assistance categories. The department has to consider all assets. (PEM 400) Assets mean vehicles. PEM, Item 400, Pages 22, 23. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability test and is not excluded. PEM, Item 400, Page 1.

The department's policy manuals provide the following policy statements and instructions for caseworkers:

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.

MA ASSET ELIGIBILITY

LIF, G2U, G2C, AMP and SSI-Related MA Only

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories. PEM, Item 400, p. 3.

Note: Do not deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.

Use the special asset rules in PEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and PEM 106 for the definition of waiver patient.

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. PEM 400.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. 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.

VEHICLES

SSI-Related MA Only

A **vehicle** is a device used to transport people or goods. Vehicle includes passenger cars, trucks, motorcycles, motorbikes, trailers, campers, motor homes, boats and all-terrain vehicles. PEM, Item 400, p. 21.

Vehicle Value

SSI-Related MA Only

The value of a vehicle is its equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision.

Liens must be on record with the Secretary of State or other appropriate agency. PEM, Item 400, p. 22.

VEHICLE EXCLUSIONS

SSI-Related MA Vehicle Exclusion

SSI-Related MA Only

Exclude one motorized vehicle owned by the asset group. If the asset group owns multiple motorized vehicles:

- . use the "EMPLOYMENT ASSET EXCLUSIONS" first, then
- . from any remaining motorized vehicles, exclude the one with the highest equity value. PEM, Item 400, p. 22.

In the instant case, there is no argument as to how much the claimant had in his account which was determined to be [REDACTED]. What is being contested is whether a second vehicle should be considered an asset for the claimant. The claimant's divorce became final [REDACTED] [REDACTED] where a 1997 Buick Regal was awarded to the claimant's ex-wife as a part of the divorce decree. The claimant's ex-wife stated that the claimant signed over the title sometime during the summer of 2007, but she doesn't remember exactly. The claimant's ex-wife did not take the title to the Secretary of State to transfer ownership until February 2009. As a result, the 1997 Buick Regal was listed as being owned by the claimant when a Secretary of State query was conducted by the department caseworker. The claimant already had a deduction on a first car, that was more expensive, but, the claimant's second car was counted as an asset in determining MA eligibility.

This Administrative Law Judge finds that the second car was available to the claimant as an asset because his name was listed on the title for the time in question. Even the claimant's ex-wife stated that the claimant signed over the title during the summer of 2007, as a legitimate owner of the car; the claimant could have gone to the Secretary of State and got a new title issued and sold the car. As a result, the asset was available to the claimant for his disposal.

A preponderance of the evidence on the record established that the claimant had countable available assets in excess of \$2,000 on the date of his application. The Medical Assistance asset limit for a person in the claimant's circumstances is \$2,000. Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's MA application due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by the necessary, competent, material, and substantial evidence in the record that it was acting in compliance with department policy when it determined that the claimant's application for Medical Assistance benefits should be denied based upon the fact that the claimant possessed excess assets.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 22, 2009

Date Mailed: July 22, 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 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.

CGF/vmc

cc:

