

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: 2008-30437

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 23, 2009

Mason County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 hearing was held on June 23, 2009. Claimant did not appear; however, she was represented by her Durable Power Of Attorney (DPOA), [REDACTED].

ISSUE

Did the department properly deny claimant's February 22, 2008 Medicaid (MA) application based on 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 entered long-term care on private pay status in October, 2004 (Department Exhibit #1, pg 3).

(2) On February 22, 2008, claimant's daughter and DPOA filed a long-term care MA application on claimant's behalf.

(3) The department requested verification of claimant's current assets and the DPOA provided them.

(4) Claimant's bank account statements verify that her combined checking/saving account balances totaled more than \$2,000 in March and April, 2008 (Department Exhibit #2 and #3).

(5) On August 6, 2008, the department mailed claimant's DPOA written notice advising her that claimant was not eligible for MA in March or April, 2008 (Department Exhibit #4, pg 1 and Department Exhibit #5, pg 1).

(6) Claimant's DPOA requested a hearing on August 19, 2008 to dispute this denial.

(7) Claimant's hearing was held on June 23, 2009.

(8) Claimant's DPOA appeared at the hearing and stipulated that claimant's assets exceeded the MA program's asset limit in the disputed months.

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).

The applicable departmental policy states:

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.

Value of Cash

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

The value of the types of assets described above is the amount of the:

- . Money/currency
- . Uncashed check, draft or warrant
- . Money in the account or on deposit
- . Money held by others

Exception: Reduce the value of a time deposit by the amount of any early withdrawal penalty, but **not** the amount of any taxes due. PEM, Item 400, p. 10.

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

At **application**, use the assets from the month of eligibility being determined. If excess assets exist at application, the group must verify that it meets the asset limit for any future month of eligibility. PEM, Item 400, p. 3.

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.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. PEM, Item 400, p. 4.

The sole material fact of record is undisputed in this case. Claimant's assets totaled more than \$2,000 in March and April, 2008. As such, the department's denial must be upheld because it is in complete compliance with the governing federal regulations and with the department's policy on which those regulations are based.

Claimant made an equitable argument for reversal of the department's action. The department's policy on this matter is clear. It states:

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's February 22, 2008 Medicaid (MA) application based on excess assets.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 25, 2009

Date Mailed: June 30, 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.

2008-30437/mbm

MBM/db

cc:

