

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: 2009-14528
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 10, 2009
Washtenaw 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 Tuesday, November 10, 2009. The claimant was not present, but was represented by her son, [REDACTED], who is her guardian/conservator.

ISSUES

(1) Did the department properly determine that the claimant had excess assets for the month of October 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) On October 31, 2008, the claimant applied for MA.
- (2) On November 17, 2008, the department caseworker sent a Verification Checklist with a due date of November 27, 2008.

(3) On November 27, 2008, the department caseworker received a request by the claimant's guardian/conservator for an extension that was granted to December 1, 2008.

(4) The claimant had assets in a checking account of [REDACTED] of which [REDACTED] was RSDI benefits and [REDACTED] was a pension, resulting in [REDACTED] in total assets. (Department Exhibit 5)

(5) On December 12, 2008, the department caseworker calculated the claimant's eligibility for MA benefits based on total countable assets of [REDACTED] for October 2008, which resulted in the claimant having excess assets. (Department Exhibit 2-4)

(6) On December 12, 2008, the department caseworker sent the claimant a notice that Medicaid would not pay for long-term care effective November 2008 to January 10, 2009 as the result of gifts because assets were transferred for less than fair market value. (Department Exhibit 1)

(7) On January 2, 2009, the department received a hearing request from the claimant's guardian/conservator, contesting the department's negative action for denied coverage for October 2008.

(8) During the hearing, the claimant's guardian/conservator stated that he was not advised or offered any information where the claimant is a widow with no community spouse. The additional funds in the account were from the claimant's husband's pre-natural death. The claimant's guardian/conservator stated that he was holding on to the money to pay the nursing home bill once the claimant had been determined eligible for MA.

(9) During the hearing, the department caseworker stated that the claimant had excess assets for MA, but did qualify for the Medicaid Savings Program (MSP).

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 in determining eligibility for MA categories. The department has considered case, investments, retirement plans, and trusts. PEM, Item 400. Assets mean cash, any other personal property, and real property. PEM, Item 400. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the available test and is not excluded. PEM, Item 400. In the instant case, there was no argument as to how much money the claimant had in her account.

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.

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

In the instant case, the claimant's guardian and conservator submitted an application on the claimant's behalf on October 31, 2008. After the required verifications were submitted, the department caseworker determined on December 12, 2008 that the claimant had excess assets for October 2008 as the result of her checking account that had a minimum balance of [REDACTED] when the claimant's RSDI of [REDACTED] and pension of [REDACTED] were subtracted, the resulting balance was [REDACTED]. As a result, the claimant had excess assets for October 2008 because her assets were greater than the \$2,000 asset limit.

Even though the claimant's guardian/conservator testified that he was saving the money to pay her balance of nursing home costs once she was approved for MA and was not advised that he had keep the claimant's assets below the \$2,000 asset limit, the claimant did have excess assets for the month of October 2008. Therefore, the department correctly determined that the claimant had excess assets for MA during the month of October 2008, but qualified for MSP.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department appropriately determined that the claimant had excess assets for the month of October 2008, but qualified for the MSP.

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

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

Date Signed: December 15, 2009

Date Mailed: December 15, 2009

2009-14528/CGF

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:

