

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: 2009-17617

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 29, 2009

Gratiot 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, October 29, 2009. The claimant was not present, but was represented by his attorney [REDACTED] and caseworker, [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 November 25, 2008, the department received an application for MA for the claimant who is living in a nursing home. The application reported 10+ acres of land owned in joint ownership with his wife where the land was valued at [REDACTED] and was not up to sale.

(2) On January 9, 2009, the department caseworker calculated the claimant's eligibility for MA based on the 10+ acres of land that was owned jointly with his wife with a value of [REDACTED], which exceeded the MA asset limit of \$2,000 and the Medical Savings Program (MSP) asset limit of \$4,000, which made the claimant over the asset limit for eligibility purposes.

(3) On January 9, 2009, the department caseworker sent the claimant a notice that he had excess assets for MA and MSP eligibility.

(4) On February 12, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On February 28, 2009, the Family Independence Manager (FIM) sent [REDACTED] a letter stating that they received a hearing request from the claimant that appears to be signed by someone from your office, but the name on the request could not be distinguished. In addition, the FIM stated that there were no papers on file with the department making your office conservator for this claimant. A request was made that a copy of conservatorship papers be sent within ten (10) days.

(6) During the hearing, the executive director and attorney testified that they were the ones who submitted the application on behalf of the claimant and that they personally had written several subsequent letters that will be sent after the hearing trying to resolve this issue.

(7) During the hearing, [REDACTED] stated that on November 25, 2008 that she sent the application, note of \$60 conservatorship, conservatory documents, and copies of bank accounts. The caseworker sent the packages through the mail and had no proof as to specifically what was sent, but she did state that this was the practice of her agency.

(8) During the hearing, all parties conceded that the “for sale” documents from the realtors were never sent to the department.

(9) During the hearing, the department’s Family Independence Manager (FIM) stated they did not have authority to speak to [REDACTED] because they did not have a copy of the conservatorship letters on file and that even after his letter sent on February 28, 2009, the conservatorship documents were never submitted, which resulted in the department not being able to speak to [REDACTED] about the MA application.

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 department manuals provide the following relevant 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.

Assets must be considered in determining eligibility for MA categories. The department has to consider cash, investments, retirement plans, and trusts. PEM, Item 400. Assets mean cash, any other personal property, and real property. 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.

In this case, there was no argument as to whether or not the claimant and his wife jointly owned 10+ acres of land.

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 establishes that the claimant had countable available assets in excess of \$2,000 on the date of his application. The claimant's application listed the 10+ acres of property that was valued at [REDACTED] on his application. There was no information submitted putting the department on notice that the land had been for sale, the claimant had been unsuccessful at selling it, and the realtor had dropped the price several times to encourage a sale.

In addition, the department did not communicate with [REDACTED] because there were no conservatorship papers on file with the claimant's application. The claimant's caseworker stated that she submitted them with her application, but the department stated they did not receive them. On February 28, 2009, the department's FIM submitted a letter stating that the department did not have the conservatorship papers and if [REDACTED] could please provide them within ten (10) days, but the conservatorship papers were not provided according to the department's testimony.

Therefore, the Administrative Law Judge concludes 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 appropriately established on the record that it was acting in accordance with department policy when it determined that the claimant's application for MA benefits should be denied based upon the fact that the claimant possessed excess asset.

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 17, 2009

Date Mailed: December 17, 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:

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