STATE OF MICHIGAN STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:





ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

# **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 October 28, 2009. The claimant was not present, but was represented by her son, **Mathematical State** Administrative Law Judge **Mathematical State** Office of Administrative Hearings and Rules. This Administrative Law Judge has reviewed the spoken and written record in its entirety and issues this decision in her stead.

### **ISSUE**

Did the department properly determine the claimant was excess assets to receive Medicaid in the months of January and February, 2009?

### FINDINGS OF FACT

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

- 1. The claimant applied for Medicaid and retro Medicaid.
- On February 18, 2009, the department issued the claimant a Verification Checklist (DHS-3503) requiring deeds to the homestead. (Department Exhibit 15 – 16)
- 3. On February 27, 2009, the claimant was mailed a second Verification Checklist (DHS-3503) that indicated the claimant would have to remove

the homestead from the trust in order to exclude it as an asset and that the months the home is in the trust, would be over the asset limit for MA. (Department Exhibit 17 - 18)

- 4. On March 9, 2009, the department received a letter from **the second s**
- 5. On March 18, 2009, the department received a copy of the quitclaim deed, removing the homestead from the trust and granting it back to as individuals. (Department Exhibit 21 22)
- 6. On March 5, 2009, the Medicaid Policy Unit issued a memorandum that indicated the homestead is a countable asset if it is in the trust, but if conveyed out of the trust and back to the customer/community spouse, it would be exempt property effective the month it was transferred. (Department Exhibit 23)
- On March 20, 2009, the department issued two Excess Asset Notices (DHS-417) that denied the claimant's Medicaid for January and February, 2009 due to excess assets. (Department Exhibit 1 – 2)
- 8. submitted a hearing request on claimant's behalf on April 3, 2009, disputing the denial of Medicaid for January and February, 2009.

## 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department 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.

- . <u>"CASH"</u> (which includes savings and checking accounts)
- . "INVESTMENTS"
- "RETIREMENT PLANS"
- <u>"TRUSTS</u>" BEM, Item 400.

### MA ASSET ELIGIBILITY

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

Asset eligibility is required for LIF, G2U, G2C, AMP and SSIrelated MA categories. BEM, Item 400, p. 3.

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

### HOMES AND REAL PROPERTY EXCLUSIONS

### Homestead Definition and Exclusion

### SSI-Related MA Only

A homestead is where a person lives (unless "Absent from Homestead") that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude the asset group's homestead. BEM, Item 400, p. 18.

Asset eligibility is a condition of SSI-related Medicaid eligibility. BEM 400. Department policy indicates that a homestead will be excluded as an asset in most circumstances. BEM 400. However, if the homestead is in a Medicaid Trust, the homestead becomes a countable asset. BEM 401. The homestead does not become exempt property until the month it is conveyed back to the claimant/spouse (provided that it meets all criteria in BEM 400).

In this case, the homestead was not transferred out of the trust until March 18, 2009. Thus, the homestead was considered an asset until March, 2009. This made the claimant excess assets to be eligible for Medicaid for January and February, 2009.

The claimant's representative indicates that the department staff member told him that the Medicaid coverage could be retroactive for three months. While a client can be considered for the three month period prior to a Medicaid application by submitted a retro Medicaid application, the client must still meet eligibility requirements, including assets. The claimant was considered for the retro period, however, she failed to qualify because the homestead was countable as an asset because it was still in the trust.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the claimant was excess assets to receive Medicaid in the months of January and February, 2009.

Accordingly, the department's determination is UPHELD. SO ORDERED.

\_/s/\_\_\_\_

Suzanne L. Morris Administrative Law Judge On behalf of Jana Bachman for Maura D. Corrigan, Director Department of Human Services

Date Signed: <u>2/22/11</u>

Date Mailed: <u>2/22/11</u>

**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.

