STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: ███████

Claimant

Reg. No: 2009-22701
Issue No: 2021
Case No: ████████
Load No: ████████
Hearing Date:
October 21, 2009
August 12, 2009
Menominee 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 Wednesday, August 12, 2009 and Wednesday, October 21, 2009. The claimant was not present at the hearing on August 12, 2009, but was represented at his initial hearing by his sister, ███████, who had power of attorney, cousin, ███████████, and ██████ trust officer from ██████. On October 21, 2009, the claimant was still not present, but was represented by his attorney, ██████████████ and the claimant's sister, ██████, power of attorney, with testimony from ███████, trust officer from ██████.

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)   The claimant was a recipient of Medicaid from October 2008 to March 2009.

(2)   Subsequently, the department caseworker received an e-mail from the Medicaid Policy Unit stating that ███████████ established a Discretionary Trust on ███████████ which does not meet the guidelines of a "Medicaid Trust" and must be considered an "Other Trust".

(3)   On March 10, 2009, the department caseworker calculated the claimant's continued eligibility for MA benefits to determine the claimant had total countable assets of ███████████ which made him over the asset limit for MA. (Department Exhibit 13-16)

(4)   On March 10, 2009, the department caseworker sent the claimant through his sister, an eligibility notice stating that the claimant had excess assets effective April 1, 2009. (Department Exhibit 9)

(5)   On March 27, 2009, the department received a hearing request from the claimant, contesting the department's negative action. The claimant's negative action was deleted because he submitted a timely hearing request so his MA benefits continued.

(6)   During the hearing on August 12, 2009, the claimant's cousin and sister attended, but did not have complete copies of the pertinent documents of the Will and Trust even though testimony was elicited from the trustee at ███████. As a result, the hearing was rescheduled until October 21, 2009.

(7)   During the hearing on October 21, 2009, the claimant was represented by his

attorney who submitted a brief on his behalf to state that there is a ██████ Trust, but it is not

a "Medicaid Trust" nor is it a "Medicaid Qualifying Trust" because the claimant did not own the

funds that created the Trust and does not have access or a legal right to the principal, just the

income after expenses that was left to the claimant by his relative (Claimant Exhibit A-I) with a

complete copy of the Last Will and Testament of ██████████ (Claimant Exhibit A-A2) and

the ██████████ Trust Agreement (Claimant Exhibit B-B5).

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:

> **Trust Definitions**
>
> **FIP, SDA and AMP Only**
>
> **Beneficiary** - the person for whose benefit a trust is created.
>
> **Grantor or settlor** - the person who established the trust. It includes anyone who furnishes real or personal property for the creation of the trust.
>
> **Principal (or corpus)** - the assets in the trust. The assets may be real property (example: house, land) or personal property (example: stocks, bonds, life insurance policies, saving accounts).

Trustee - the person who has legal title to the assets and income of a trust and the duty to manage the trust for the benefit of the beneficiary. PEM, Item 400, p. 15.

CLIENT'S ASSET ELIGIBILITY

Initial Eligibility

SSI-Related MA Only

Apply the following formula to:

.   each past month, including retro MA months, and the processing month for applicants, and

.   the first future month for MA recipients

Exception: Do **not** do initial eligibility when the **"SPECIAL EXCEPTION POLICY"** above applies.

Begin the client's "Presumed Asset Eligible Period" (below). PEM, Item 402, p. 3.

Initial Eligibility Formula

SSI-Related MA

The formula for asset eligibility is:

.   The value of the couple's (his, her, their) countable assets for the month being tested

.   MINUS the "protected spousal amount" (see below)

.   **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in PEM 400 for the category(ies) being tested. PEM, Item 402, p. 3.

Assets must be considered in determining eligibility for MA. 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.

A preponderance of the evidence on the record does not establish 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.

The claimant's relative, ███████████, in his Last Will and Testament, created a Trust for the claimant to have a little bit of extra money that he could use to go to the movies, buy little things, and to make his life more comfortable. In ███████████ Last Will and Testament, he set aside funds for the ████████ Trust where the claimant would not have access or the legal right to the principal, but the income until the claimant's death where the principal would go to ███████████ sister. ███████████ Will is very clear as to the fund being set up, what the claimant was entitled to, and who was to have the principal after the claimant died. The claimant does not have access to the principal of this fund and would not be legally able to access the principal of the fund. The claimant's only entitlement is to the income while he is living. The claimant's income that he receives from the Trust is considered income in the month that he receives it in determining eligibility.

Therefore, the department has not established that it was acting in compliance with department policy by determining that the claimant was not eligible to receive MA benefits starting in April 2009 because he had excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately determine that the claimant had excess assets from April 2009.

Accordingly, the department's decision is **REVERSED**. The department is ordered to determine the claimant's eligibility for MA based on the income received from the ███████ Trust, not the principal.

/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

<u>NOTICE</u>: 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: ███████