

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

IN THE MATTER OF:



Reg. No: 2009-23133
Issue No: 2019, 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 11, 2010
Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 August 11, 2010. Claimant personally appeared and testified. Claimant is in a Nursing Home and her granddaughter appeared and testified on her behalf.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance benefits (retro MA-P) based upon its' determination that claimant possessed excess assets?

Did the department of Human Services appropriately determine claimant's patient pay amount?

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 December 7, 2008, an application was made for Medical Assistance and retroactive Medical Assistance for the claimant who was living in a Nursing Home.
- (2) After all the information was received and the case was processed on March 9, 2009, the department determined that claimant had excess assets for all of the months requested.

- (3) On March 9, 2009, the department case worker sent claimant notice that her application was denied for excess assets.
- (4) On March 27, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 30, 2009, the new BRIDGES computer program sent claimant and Nursing Home patient a patient pay notice telling her that she had to pay \$ [REDACTED] per month for her patient pay amount.
- (6) On April 10, 2009, claimant's power of attorney requested a hearing because she felt that the amount was too high.

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).

For purposes of making an asset determination, the department must follow department policy.

For asset determination pertinent 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.

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

Overview of Asset Policy

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but **not** for another program. Some programs do **not** count assets (see "PROGRAMS WITH NO ASSET TEST" below).

You must consider the following to determine whether, and how much of, an asset is countable.

- . Availability
 - .. see "AVAILABLE"
 - .. see "JOINTLY OWNED ASSETS"
 - .. see "NON-SALABLE ASSETS"

Exclusions. BEM, Item 400, p. 1.

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

You must consider the assets of each person in the asset group. See the program's asset group policy below. BEM, Item 400, p. 1.

An asset converted from one form to another (example: an item sold for cash) is still an asset. BEM, Item 400, p. 1.

FIP, SDA, LIF, G2U, G2C, and AMP Only

The following types of assets are the only types considered for FIP, SDA, LIF, G2U, G2C, and AMP:

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

SSI Related MA

All types of assets are considered for SSI-related MA categories. BEM, Item 400, p. 2.

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. BEM, 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 BEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and BEM 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. BEM 400.

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

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see BEM 405). BEM, Item 400, p. 4.

LIF Asset Limit

LIF Only

\$3,000. BEM, Item 400, p. 4.

SSI-Related MA Asset Limit

SSI-Related MA Only

For Freedom to Work (BEM 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 (BEM 165) and QDWI (BEM 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. BEM, 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. BEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. BEM, Item 400, p. 6.

In the instant case, the department received bank statements for claimant's accounts. For the months of November 2008, the lowest balance for claimant was \$ [REDACTED]. The maximum balance was \$ [REDACTED] (exhibit 43). For the month of November 2008, claimant's lowest checking balance was \$ [REDACTED] (p. 41). Based upon the information contained in the file, claimant had at all times relevant to the application dated December 17, 2008, in excess of \$ [REDACTED] income for available assets, when all of her accounts were combined. Therefore, the department's decision must be upheld.

A post eligibility patient pay amount is the patient's share of the costs of long-term care of hospital services. The department must first determine MA eligibility, and then the department must determine the post eligibility patient pay amount when MA eligibility exists for Nursing Home patients eligible under an SSI related group 1 or 2 category. MA income eligibility and post eligibility patient pay amount determinations are not the same. Countable income and deductions from income often differ. Medical expenses

such as the cost of long-term care and never used to determine the post eligibility patient pay amount. Do not recalculate a patient pay amount for the month death. The post eligibility patient pay amount is the total income minus total need. Total income is the client's countable unearned income plus his remaining earned income. Total need is the sum of the patient allowance, community spouse allowance, family allowance, children's allowance, health insurance premiums and guardianship/conservator expenses. For all persons in this item, the department is to determine countable income from RSDI and non-SSI income for SSI recipients. BEM, Item 546, p. 1.

The patient allowance for clients who are in or expected to be in long-term care and or a hospital the entire month L/H month is \$ [REDACTED] if the month being tested is November 1999 or later and \$ [REDACTED] if the month being tested is before November 1999. The only exception is to use \$90 for any month a patient's VA pension is reduced to \$ [REDACTED] per month. The department is to use the appropriate protected income level for 1 from RFT 240 for clients who enter long-term care and/or a hospital but are not expected to remain the entire L/H month. Reminder, the patient pay amount is not reduced or eliminated in the month the person leaves the facility. L/H patients can divert income to meet the needs of the community spouse. BEM, Item 546, p. 2.

In the instant case, there is no community spouse. Claimant receives RSDI income in the amount of \$ [REDACTED] per month. She is allowed \$ [REDACTED] for patient allowance and therefore her patient pay amount is \$ [REDACTED]. The department appropriately determined that claimant's patient amount is \$ [REDACTED]. Since there is no community spouse, there is no community spouse allowance. There is no shelter expense allowed for the claimant's principal residence because there is no community spouse who requires a community residence. Therefore, the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it first denied claimant's December 17, 2008, application for Medical Assistance and retroactive Medical Assistance because claimant possessed in excess of \$ [REDACTED] in countable available assets and then when it determined that claimant's patient pay amount was \$ [REDACTED] based upon the fact that she was receiving \$ [REDACTED] in total unearned income and received a patient allowance of \$ [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it first determined that claimant had in excess of \$ [REDACTED] in countable available assets for the December 17, 2008 application and retroactive Medical Assistance application and when it determined that claimant had a \$ [REDACTED] patient pay amount.

Accordingly, the department's decision is AFFIRMED in both cases.

Landis

/s/

Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 27, 2010

Date Mailed: November 1, 2010

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.

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