

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: 2009-24596
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 20, 2010
Oakland 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 January 20, 2010. Claimant's representative personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant had excess assets or divestment for purposes of long-term medical care for claimant?

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 February 20, 2009, claimant applied for long-term care Medical Assistance benefits.
- (2) Claimant also requested retroactive Medical Assistance benefits for the months of January 2009 and December 2008.

(3) At the time of the application, claimant had her house in [REDACTED] in a trust.

(4) According to Michigan department policy, the house is an asset for the Medicaid Program if it is in a trust.

(5) Claimant was advised prior to the application of December 30, 2008 that the house needed to be taken out of the trust.

(6) Claimant's representative removed the house from the trust on February 9, 2009, making it no longer an asset.

(7) Claimant was approved from Medical Assistance benefits beginning February 1, 2009.

(8) Retroactive Medical Assistance benefits were denied for January 2009 and December 2008.

(9) On March 13, 2009, the department caseworker sent claimant's representative notice that claimant was approved for Medical Assistance benefits beginning February 1, 2009 but was denied for retroactive Medical Assistance benefits for January 2009 and December 2008.

(10) On March 26, 2009, claimant's representative filed a request for a hearing to contest the department's negative action.

(11) Claimant's house was valued was [REDACTED].

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).

Assets must be considered in determining eligibility for Medical Assistance Program categories. Assets mean cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. BEM, Item 400, p. 1. Countable assets cannot exceed the applicable asset limit. Not all assets are counted. BEM, Item 400, p. 1. An asset is countable if it meets the availability test and is not excluded. BEM, Item 400, p. 1. 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. An asset limit for a SSI-related asset group is \$2,000 for an asset group of one person. BEM, Item 400, p. 5.

A homestead is where a person lives unless absent from the 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. Exclude the asset group's homestead. Exclude only one homestead for an asset group. BEM, Item 400.

Exclude a homestead that an owner formerly lived in if any of the following are true:

- . The owner intends to return to the homestead.
- . The owner is in a long-term care facility, a hospital, an adult foster care home or a home for the aged.
- . A co-owner of the homestead uses the property as his home. BEM, Item 400, p. 21.

The following are countable assets:

- . Assets that are countable using SSI-related MA policy in BEM 400. Do not consider an asset unavailable because it is owned by the trust rather than the person.
- . The homestead of an L/H or waiver patient or the patient's spouse even if the home was transferred before the patient was institutionalized or approved for the waiver. BEM, Item 401, pp. 8-9.

According to department policy a homestead which is in a trust is countable as an asset. A homestead which is not in a trust is not countable as an asset as long as the person either lived in the house or is planning to return to the homestead. Persons who are in long-term care also are able to exclude one homestead. For purposes of this hearing, the facts are not an issue. Claimant's representative transferred claimant to Michigan into long-term care. Claimant was advised that the house needed to be taken out of the trust or would be counted as an asset. The house was valued at [REDACTED]. As long as the house was in the trust, claimant had in excess of \$2,000 in countable available assets. Once the house was removed from the trust, claimant no longer had in excess of \$2,000 in countable available assets. Therefore, the department appropriately approved claimant for Medical Assistance benefits beginning February 1, 2009. Retroactive Medical Assistance was appropriately denied for January 2009 and December 2008 because claimant's homestead was property of the trust and was a countable available asset for those dates.

Claimant's representative is asking for this Administrative Law Judge to make a determination based upon equity. Administrative Law Judges do not have equity powers.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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 the department denied claimant's application for retroactive Medical Assistance for the months of January 2009 and December 2008 based upon the fact that claimant possessed in excess of \$2,000 in countable available assets because her homestead was the property of the trust. Claimant appropriately became eligible for Medical Assistance benefits once the homestead was removed from the trust.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: March 29, 2010

Date Mailed: March 29, 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.

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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.

LYL/vmc

cc:

