

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: 2009-25042
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 14, 2010
Wayne 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 14, 2010. Claimant is in a nursing home and was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's Medical Assistance (MA-P) benefits based upon its determination that claimant has excess income and/or divestments?

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 3, 2008, application for Medical Assistance was made on behalf of claimant.

(2) On February 19, 2009, the Employee Life Mutual Annuity (██████████) was established for the client and was submitted to the medical assistance policy for approval.

(3) The policy stated divestment occurred because the State Of Michigan was not named a remainder beneficiary for annuity purchased on/after February 8, 2006.

(4) The annuity paid claimant ██████████ more per month for four months.

(5) This made the claimant have excess income and have a deductible of ██████████ per month.

(6) On October 31, 2008, the claimant gifted \$ ██████████ to her daughter.

(7) The divestment, of ██████████ in excess income, claimant was not eligible for medical assistance benefits until August 12, 2009.

(8) On March 5, 2009, the department case worker sent claimant notice that her application was denied.

(9) On April 22, 2009, claimant's attorney filed a request for a hearing to contest the department's negative action.

CONCLUSIONS OF LAW

Assets must be considered in determining eligibility for Medical Assistance benefits. 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. BEM, Item 400, p. 1. All types of assets are considered for SSI related MA categories. BEM, Item 400, p. 2. Asset eligibility exists when the asset group's countable assets are less than or equal to the applicable asset limit as least one day during the month being tested. At application, the department caseworkers are directed not to authorize Medical Assistance for future months if the person has excess assets on the processing date. The SSI related asset limit

is \$ [REDACTED] for one person fiscal group in claimant's circumstances. BEM, Item 400, p. 5. An asset must be available to be counted. Available means that someone in the asset group that has the legal right to use or dispose of the asset. BEM, Item 400, p. 6.

MA divestment results in a penalty period in Medical Assistance, not in eligibility. Divestment policy does not apply to qualified working individuals (BEM, Item 169). BEM, Item 405, p. 1. Divestment is a type of transfer of a resource and not an amount of resources transferred. Divestment means a transfer of resource by a client or a spouse that:

- Is within a specified time, and
- Is transferred for less than fair market value, and
- Is not listed under transfers that are not divestments.

During the penalty period the Medical Assistance will not pay for clients cost for:

- Long Term Care services
- Home and community-based services
- Home Help
- Home health

MA will pay for other MA coverage services. BEM, Item 405. There has been no allegation that a finding of divestment penalty created a hardship in this case.

In the instant case, claimant's attorney argues that she should only have penalties for the month of November 2008, December 2008, and January 2009 and that she should have become eligible in February 2009. This Administrative Law Judge finds that claimant gifted her daughter \$ [REDACTED] in October 31, 2008, which would have given her ineligibility for Medical Assistance for the month of November 2008, December 2008, January 2009. Claimant did have \$ [REDACTED] which she placed in an Annuity on or after February 8, 2006 and she did make the remainder

beneficiary for the annuity the State of Michigan. Therefore, divestment occurred and claimant would have been ineligible for the months of May, June, and July and would not become eligible for Medical Assistance until August 12, 2009 based on the fact that had excess income and deductible of \$ [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that the department had established by necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant either had divestment or excess assets for the months of October, November, December 2008 and January through July 2009 based upon claimant having either possession of excess assets or having divested those assets and being in the penalty period.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: April 23, 2010

Date Mailed: April 23, 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/alc

cc:

