

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.: 2009-26986
Issue No.: 2026
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 4, 2010
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Thursday, March 4, 2010. The Claimant's court appointed Special Fiduciary ("Fiduciary") appeared and testified. [REDACTED] and [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the Claimant's MA case for the months of January and February 2009 due to excess assets?

FINDINGS OF FACT

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

1. The Claimant resides in a long-term care facility. (Exhibit 4)
2. On September 29, 2008, the Probate Court appointed a Special Fiduciary due to the Claimant's sister/guardian failure to file an account with the Probate Court. (Exhibit 3)

3. On January 14, 2009, the Claimant's sister/guardian filed a Medical Assistance Application.
4. As a result, the Department requested income and asset verifications which were submitted to the department.
5. The Claimant receives \$837.08 each month in retirement benefits. (Exhibit 1)
6. In January 2009, the Claimant's savings account balance was \$5,422.21. (Exhibit 1, p. 3)
7. In February 2009, the Claimant's savings account balance was \$6,259.29. (Exhibit 1, p. 4)
8. In January and February 2009, no payments were made to the nursing home.
9. On March 4, 2010, the Fiduciary withdrew \$6,000 from the Claimant's savings account to pay the nursing home. (Exhibit 1, p. 5)
10. On March 12, 2009, the Department approved the Claimant's MA case beginning March 1, 2009 provided a \$2,134.00 monthly deductible was met. (Exhibit 2, p. 9)
11. The Department determined that for the months of December 2008 through February 2009, that the Claimant was not eligible for MA due to excess assets. (Exhibit 2, pp. 6 – 8)
12. On May 8, 2009, the Department requested an Exception on behalf of the Fiduciary to allow retroactive benefits for the period of excess assets due to a large outstanding bill at the nursing home. (Exhibits 4, 5)
13. On May 21, 2009, the Department of Community Health denied the Department's exception request. (Exhibit 4)
14. On May 22, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 6)

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, formerly known as the Family Independence Agency, 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 goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. PEM 105, p. 1 Medicaid is also known as Medical Assistance (“MA”). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for SSI recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive MA under FIP-related categories. *Id.*

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. PEM 155 Financial eligibility for Group 1 exists when countable income minus allowable expenses equals or is below certain income limits. *Id.* MA income eligibility exists for the calendar month tested when there is no excess income or allowable medical expenses that equal or exceed the excess income. PEM 545 The fiscal group’s monthly excess income is called a deductible amount. PEM 545 Meeting a deductible means reporting and verifying allowable medical expenses that

equal of exceed the deductible amount for the calendar month tested. *Id.* FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. PEM 105 Individuals that are aged (65 or older) blind or disabled fall under the SSI-related Group 2 MA category. PEM 166

Assets must be considered in determining MA eligibility. PEM 400 Assets are cash and any other personal and/or real property. *Id.* Countable assets must be available and cannot exceed the applicable asset limit. PEM 400 Available means that someone in the asset group has the legal right to use or dispose of the asset. PEM 400

Department manuals, numbered bulletins, and numbered Department local office letters contain the department's official policy however because not every conceivable situation can be addressed, policy exception decisions for specific problems may be issued by either the Department of Community Health ("DCH") central office for MA and AMP (adult medical program), or the Bureau for Adult and Family Services, Income Support Services, in the DHS central office for all other programs. PEM/BEM 100 The three situations which warrant a policy exception are as follows:

- There is no existing policy in manuals, numbered bulletins or numbered letters that applies to a specific case.
- A policy exception is needed for use in a specific case due to new legal decision or a new law or regulation which is not yet official DHS policy.
- A policy exception is needed based on unique and rare circumstances in a specific case to avoid extreme and unusual hardship on the client for purposes of FIP, SDA, CDC, MA, AMP and RAP benefit programs only.

In this case, the Fiduciary became aware of the Claimant's account in December of 2008 and obtained control over the account in January 2009. Although the Claimant had a balance due at the nursing facility for the months of January and February, payment was not made until March 2009. As a result, the Claimant's savings account balances for January and February were over the \$2,000 asset limit even after excluding the current month's retirement income. The Fiduciary acknowledged the error and contends that denial of MA benefits for January and February creates a hardship to the client. In review of the BEM 100, in order for a policy exception to be granted, the situation must be unique and rare and result in an extreme and unusual hardship. In this case, the situation presented is not unique and rare, nor does it result in an extreme and unusual hardship. Ultimately, the Department established it acted in accordance with department policy when it denied the Claimant's MA case due to excess assets for the months of January and February 2009. Accordingly, the Department's determinations are affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department acted in accordance with Department policy when it denied the Claimant's MA case for the months of January and February 2009.

Accordingly, it is ORDERED:

The Department's determinations are AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 3/25/2010

Date Mailed: 3/25/2010

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 receipt 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.

CMM/jlg

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