

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

IN THE MATTER OF:

[REDACTED]

Reg No. 200927147
Issue No. 2000/2006/2021
Case No. [REDACTED]
Hearing Date: February 17, 2010
St Clair County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 a hearing. After due notice, an in-person hearing was held on February 17, 2010. Claimant was represented by [REDACTED].

ISSUE

Did the department properly deny claimant's February 13, 2009 and July 31, 2009 long-term care Medicaid (MA)/retro-MA and Medicare Savings Program (MSP) applications?

FINDINGS OF FACT

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

1. Claimant was a widow who entered long-term care on August 2, 2007; she died on [REDACTED]
2. In 2006, claimant created a Revocable Living Trust; she deeded her house into that trust by Quit Claim Deed dated [REDACTED] (Department Exhibit #1, pgs 25-44, 45-46 and 69-87).

3. Claimant's son-in-law/Durable Power of Attorney (DPOA) filed multiple MA/retro-MA/MSP applications before the two at issue in this case (2/09 and 7/09), both filed with attorney assistance.
4. While processing claimant's first application received shortly after she entered long-term care in 2007, the local office requested clarification from their Medicaid Policy Unit about the countability of claimant's trust assets, as required by BEM Item 400, pg 17 and BEM Item 401, pgs 2 and 3.
5. By written memo dated December 19, 2007, the Medicaid Policy Unit replied in relevant part:

If the homestead has been transferred to the trust, it is no longer exempt and must be counted as an asset of the trust. Should the property be conveyed out of the trust back to the customer/community spouse, it would be exempt property effective the month it was transferred, if the property meets the homestead criteria listed in PEM (now BEM) 400, pgs 17-19 (Department Exhibit #1, pg 89).
6. The attorney claimant's son-in-law hired stipulated at hearing he did not execute a Quit Claim Deed transferring claimant's house out of the trust until [REDACTED] and also, he provided a copy of that deed (Client Exhibit D, pg 1).
7. Two weeks after the deed was executed, the department received claimant's July 31, 2009 MA/retro-MA/MSP application (Department Exhibit #2, pgs 1-6 and 23-24).
8. The application processing worker's notes on that application state in relevant part:

Looks like only eligible only after taking house out of trust July 09 (Department Exhibit #2, pg 6)(See also Finding of Fact #5 and #6 above).
9. This worker stipulated at hearing the transferring Quit Claim Deed came in with claimant's July 31, 2009 application.

10. Additionally, the computerized budget the worker previously calculated for claimant's February 2009 application verified claimant's checking and savings account assets were nominal, and thus, they would not have risen anywhere near the [REDACTED] long-term care MA or the [REDACTED] MSP asset limits effective at that time, as specified at PEM Item 400, pg 5 (Department Exhibit #1, pgs 47-60).
11. Between claimant's admission to long-term care (8/2/07) and November 2008, claimant's son-in-law/DPOA claims to have used her cash assets to pay her ongoing long-term care bills, and also, he purchased a prepaid funeral plan, which qualifies as an excluded asset pursuant to BEM Item 400, pgs 27-41.
12. Claimant's son-in-law/DPOA provided a copy of the [REDACTED] Funeral Service Contract (dated [REDACTED]) to the local office when he filed one of the previous applications in March 2008, per his hearing testimony (Administrative Law Judge Exhibit I)(See also Finding of Fact #3 above).
13. At some point prior to the July 31, 2009 application filing, claimant's son-in-law/DPOA also verbally notified the department her stocks had been liquidated and the money had been spent on nursing home bills, per his hearing testimony.
14. At hearing on February 17, 2010, seven months after the July 2009 application was filed, the son-in-law's/DPOA's attorney provided verification that her stocks had been sold in January 2008 for considerably more than the disputed program asset limits (See also Finding of Fact #10 above).
15. Claimant's son-in-law/DPOA testified he did not list the stocks on claimant's July 31, 2009 application because they no longer existed.
16. Therefore, the application processing worker sent claimant's son-in-law/DPOA a Verification Checklist (DHS-3503) on August 11, 2009, requesting verification of the stock liquidations (i.e., "Stocks. Where did the go?") because she knew they previously existed from the past applications, all filed and denied (Client Exhibit H, pg 1)(See also Finding of Fact #3 above).
17. This checklist clearly specifies the due date for return of the requested stock liquidation verifications and updated bank statements; that due date was August 24, 2009, and also, it states as follows:

Important Information:

Call me right away if you cannot come to the interview or if you have any questions or problems getting the proofs. I will help you get the proofs if you ask for help. If the information must be provided on a DHS form, the form is enclosed.

You must get the proofs to me or call me by the due date below.

If you do not, your benefits may be denied or cancelled (Client Exhibit H, pg 1).

18. When the department did not receive the necessary, requested verifications they mailed written notice dated August 27, 2009 to claimant's son-in-law/DPOA advising him her July 31, 2009 application was being denied based on failure to timely provide the department with information needed to determine eligibility (Client Exhibit H, pg 2).
19. This denial notice also specifies an applicant must file a dated, written hearing request within 90 days of the denial notice date (Client Exhibit H, pg 2).
20. Neither claimant's son-in-law/DPOA nor his attorney filed a hearing request in compliance with the above-referenced timeliness provision, unlike claimant's February 13, 2009 application denial, when the department received a written hearing request dated March 24, 2009 (Client Exhibit G, pgs 1 and 2).

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).

(A) Issue 1—Application Filed February 13, 2009

The department's policy as well as the documentary evidence of record is clear and undisputed. The asset limit for MSP was [REDACTED] and the asset limit for MA was [REDACTED] in February 2009. It remained the same in July 2009. The Fair

Market Value (FMV) of claimant's home in trust was well over this limit, and thus, MA/retro-MA/MSP eligibility was precluded based on excess assets pursuant to the following policy clause:

If the homestead has been transferred to the trust, it is no longer exempt and must be counted as an asset of the trust. Should the property be conveyed out of the trust back to the customer/community spouse, it would be exempt property effective the month it was transferred, if the property meets the homestead criteria listed in PEM (now BEM) 400, pgs 17-19 (Department Exhibit #1, pg 89).

Additionally, it must be noted 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. Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280.

As such, this Administrative Law Judge finds claimant's February 13, 2009 application must remain denied.

(B) Issue 2—Application Filed July 31, 2009

The department did not receive a written hearing request within the allotted time, as required by the federal regulations, Administrative Rules and departmental policy, which state as follows:

The department must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.

The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal a department action. 45 CFR 205.10.

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

As such, this portion of claimant's grievance must be dismissed for lack of jurisdiction shown. However, even if a timely hearing request had been filed, no basis exists to reverse the department's denial action. The governing 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” PEM, 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. PEM, Item 400, p. 1.

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

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

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

VERIFICATION AND COLLATERAL CONTACTS

DEPARTMENT POLICY

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- . required by policy. PEM items specify which factors and under what circumstances verification is required.
- . required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for MA, TMA-Plus or AMP without prior approval from central office.
- . information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. PAM, Item 130, p. 1.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. PAM, Item 130, p. 1.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see "**Timeliness Standards**" in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed and the client has not made a reasonable effort to provide it. PAM, Item 130, p. 4.

MA Only

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed. PAM, Item 130, p. 4.

Only **adequate** notice is required for an application denial. **Timely** notice is required to reduce or terminate benefits.

Exception: At redetermination, **FAP** clients have until the last day of the redetermination month **or** 10 days, whichever is later, to provide verification. See PAM 210. PAM, Item 130, p. 4.

TMAP

See PEM 647 regarding timeliness standards for TMA-Plus determinations. PAM, Item 130, p. 5.

As such, even if a timely hearing request had been filed, the evidence of record establishes the necessary asset verifications were not submitted by the stated deadline; consequently, the department had no alternative but to deny claimant's July 31, 2009 application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's

February 13, 2009 application based on excess assets. Furthermore, the second grievance regarding the department's denial of claimant's July 31, 2009 application is dismissed for lack of jurisdiction shown. **SO ORDERED.**

/s/

Marlene B. Magyar
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 22, 2011

Date Mailed: March 22, 2011

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.

MBM/db

cc:

