

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: 2009-28117
Issue No: 2010
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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, a telephone hearing was conducted from Detroit, Michigan on October 28, 2009. [REDACTED], POA and [REDACTED], Admissions Director [REDACTED], appeared and testified on behalf of Claimant, [REDACTED]. Consuela Harris, ES and Corlea Turner-Gibson, FIM appeared on behalf of the Department of Human Services.

ISSUE

Whether the Department properly penalized the Claimant's Medical Assistance ("MA") benefits from 12/1/08 through 10/17/09 due to divestment of 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. Claimant applied for MA benefits which were granted by the Department.
(Exhibit 4).

2. Claimant's Authorized Representative is her grandson-in-law, [REDACTED]. (Exhibit 1).
3. Claimant had a CD at [REDACTED] in the amount of \$59,945.28. Listed on the CD were Claimant, [REDACTED] and [REDACTED]. (Exhibit 2, p. 4).
4. On [REDACTED], Claimant's son, [REDACTED] withdrew the entire CD contents. A penalty of \$260.65 was charged for early withdrawal netting the son \$59,713.13.
5. Claimant signed a letter dated [REDACTED] indicating that the son's name was placed on the account for convenience purposes only and that the son was not authorized to make the withdrawal. (Exhibit 2, p. 5).
6. A police report was filed with the Detroit Police Department on 11/12/08. (Exhibit 2, pp. 10-12).
7. The AR informed the Department of the CD withdrawal on 5/27/09.
8. The Department determined that the withdrawal was divestment and applied a 9.581 month penalty period from 12/1/08 and 10/17/09. Claimant was notified on 6/5/09. Exhibit 4.
9. On June 16, 2004, the Department received the Claimant's Request for Hearing protesting the penalty towards MA benefits.

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, formally 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 formally 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 through 174 describe SSI-related categories. PEM 105, p. 1 Financial eligibility for Group 1 exists when countable income minus allowable expenses equals or is below certain income limits. *Id.* The income limits vary by category and are for non-medical needs such as food and shelter. *Id.* Medical expenses are not used when determining eligibility for FIP- and SSI-related Group 1 categories. *Id.* Extended-Care benefits is an SSI-related Group 1 MA category.

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, p. 2 Individuals that are aged (65 or older) blind or disabled fall under the SSI-related Group 2 MA category. PEM 166, p. 1

As noted above, Extended-Care is an SSI-related Group 1 MA category that is available only to L/H and waiver clients who are aged (65 or older), blind, or disabled and whose gross

income does not exceed \$1,869.00 for 2007, and \$1,911.00 for 2008 and \$2022.00 for 2009. PEM/BEM 164, p. 2. L/H patient is a MA client who was in the hospital and/or LTC facility in a calendar month containing at least one day that is part of a period in which a person was (or is expected to be) in a LTC facility and/or hospital for at least 30 consecutive days and the person was not a waiver patient. PRG Glossary, p. 22. Countable income may be more than the amount a person actually receives because it is the amount before any deductions including deductions for taxes and garnishments. PEM 500, p. 1. Court ordered child support is not deducted from income in determining Extended-Care eligibility. PEM 164, p. 2; PEM 541, p. 1. The patient allowance for clients who are in, or expected to be in, a LTC and/or hospital the entire L/H month is \$60.00. PEM 546, p. 1.

Assets must be considered in determining MA eligibility. PEM 400, p. 1. 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, pp. 1, 6. Available means that someone in the asset group has the legal right to use or dispose of the asset. PEM 400, p. 6

Divestment for MA purposes refers to a transfer, unless excluded, of a resource by a client or his/her spouse that is within a specified time, and is less than fair market value. PEM 405, p.1 Resource means all of the client's and spouse's assets and income. It also includes all assets and income that the individual was entitled to but did not receive because of the action by a person with legal authority to act in place of the client. *Id.* When a client jointly owns a resource with another person(s), any action by the client or by another owner that reduces or eliminates the client's ownership or control is considered a transfer by the client. PEM 405, p. 3.

The regulation goes on to cite a specific example as follows:

Example: Mr. Jones is applying for MA. In 2005, he added his sister's name to his bank account. Each is free to withdraw as much money as desired so adding the sister's name did **not** affect the client's ownership or control. On September 1, 2007, the sister

withdrew \$10,000 and deposited the money in her own bank account. Mr. Jones is considered to have transferred \$10,000 on September 1, 2007, the day he no longer had ownership and control of his money. *Id.*

In the record presented, the Claimant opened a CD account and named her son and daughter on the account. Each person listed on the account had full access to the funds regardless of where the funds came from. According to PEM 405, Claimant and her children were joint owners of the account as any one of the listed account holders had the authority to withdraw the money at any time. Furthermore, when the son withdrew the funds, just like the example listed above, Claimant no longer had ownership or control of the money and is considered to have transferred the funds.

The policy regarding jointly owned assets was explained to the AR at the hearing. The AR then requested an equitable remedy based on the facts of this case. While the Administrative Law Judge feels for the Claimant given her fixed income, 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.

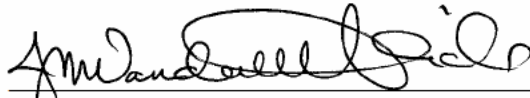
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Based upon the foregoing facts and relevant law, it is found that the Department properly applied a divestment and subsequent penalty based upon the transfer of joint assets to the Claimant's son. The Department's action is, therefore, **AFFIRMED**.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department properly found that the Claimant transferred assets and the Department properly applied a divestment penalty.

Accordingly, the Department's determination is AFFIRMED.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/09/09

Date Mailed: 12/11/09

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.

JV/dj

cc:

