

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: 2009-29370  
Issue No: 2021  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 13, 2009  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 August 13, 2009. Claimant appeared and testified.

ISSUE

Did the Department properly determine Claimant had excess asset Medical Assistance (MA) benefits?

FINDINGS OF FACT

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

1. On September 22, 2008 the Claimant applied for MA.
2. January 16, 2009 Medical Review Team determined the Claimant was in fact disabled.
3. On February 10, 2009 requested proof of IRA.

4. On March 6, 2009 the Department received proof of IRA.
5. On March 10, 2009 Department completed a budget and determined the Claimant had excess assets for MA based upon his wife's IRA account.
6. On March 10, 2009 the Department sent denial notice to the Claimant.
7. On June 8, 2009 the Claimant requested a hearing.

### 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).

In the present case Claimant disputes the Department's denial of his application for MA based on excess asset. The Department's decision to deny MA coverage based upon excess assets. The Department determined the Claimant's wife's IRA account was a countable asset.

Relevant policy can be found in PEM Item 400, p. 6:

### **AVAILABLE**

#### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset.

This does **not** apply to trusts. There are special rules about trusts. See "**TRUSTS**" below for FIP, SDA and AMP. See PEM 401 for MA trust policy.

Assume an asset is available unless evidence shows it is **not** available.

An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:

A person's guardian dies and a new guardian has **not** been appointed yet.

A court decides a person needs a guardian, but has **not** appointed one yet.

A person is unconscious and his family asks the court to appoint a guardian.

Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. See “JOINTLY OWNED ASSETS”, “NON-SALABLE ASSETS” and “VICTIMS OF DOMESTIC VIOLENCE” below.

The Claimant testified during the hearing that his spouse could only receive payouts as indicated in the contract and he and his spouse were unable to get a lump sum payment unless she died. The Claimant provided a copy of the agreement and the agreement clearly indicates no lump sum payments are allowed. The only method for the Claimant to receive a payout would be if his spouse were to die. Therefore the IRA assets are not truly available. The Department however should budget the money paid yearly to the Claimant and his spouse as income. The total value of the IRA is not in fact available.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department incorrectly counted the IRA as an asset.

Therefore, it is ORDERED that the Department’s decision in this regard be and is hereby REVERSED. The Department shall complete an eligibility determination for MA.

/s/

Jonathan W. Owens  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 9/15/09

Date Mailed: 9/15/09

**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 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.

JWO/at

cc:

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