

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

In Care of: [REDACTED],

Spouse

Reg. No: 2009-30149

Issue No: 2019

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 14, 2010

St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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, in Port Huron. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Kris Rutkowski (FIM) and Brenda Kalz (ES).

ISSUES

(1) Did the department correctly exclude claimant's rental property expenses from [REDACTED] October 2008 Patient Pay Amount (PPA) budget because claimant did not timely provide reliable self-employment records, as requested?

(2) Did DHS correctly exclude claimant's rental property from [REDACTED] April 2009 PPA budget as claimant did not timely provide reliable self-employment records, as required?

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 and his wife are MA-M recipients. [REDACTED] are represented by [REDACTED] who is also a licensed [REDACTED].

(2) Claimant is the community spouse and lives independently.

(3) [REDACTED] is a long-term care (LTC) spouse. She lives in a long-term care facility.

(4) [REDACTED] receives MA-M benefits to pay a portion of her long-term care monthly expenses. [REDACTED] is required to pay a portion of her long-term care expenses otherwise known as the Patient Pay Amount.

(5) Every six months, claimant's caseworker prepares an MA-M eligibility budget to determine [REDACTED] Patient Pay Amount (PPA).

(6) [REDACTED] PPA budget is based on the family's ability to pay (income minus expenses).

(7) The DHS has complex rules to determine how much [REDACTED] need for their monthly living expenses. When a budget is prepared, caseworker subtracts the allowable expenses for the community spouse ([REDACTED]), and [REDACTED] long-term care expenses from the family's earned and unearned income.

(8) [REDACTED] allowable expenses are subtracted from their countable income; the remainder is available to [REDACTED] for paying a portion of her long-term care expenses.

(9) During the period in question, [REDACTED] owned two rental properties. These rental properties provided countable income and expenses which the caseworker was required to use in the preparation of [REDACTED] Patient Pay Amount.

(10) Every six months, the caseworker is required to prepare a new MA-M eligibility budget and a new Patient Pay Amount for [REDACTED].

(11) On July 18, 2008, the caseworker received a letter from [REDACTED] which states in pertinent part:

[REDACTED]:

This letter is to inform you that on May 14, 2008, a distribution on an actuarially sound basis in the amount of \$68,400 has been made to [REDACTED] from the [REDACTED] Irrevocable Trust dated June 6, 2007. Enclosed is a copy showing a distribution of property to [REDACTED]. The sole value of the property given to [REDACTED] was determined based on two times the State Equalized Value (SEV).

If you have any questions, please do not hesitate to contact me.

* * *

We hereby appeal your eligibility notice dated September 10, 2008 (copy enclosed) indicating that [REDACTED] Patient Pay Amount is \$265, for the reason that [REDACTED] net monthly income is negative. This is less than the spousal minimum monthly maintenance needs allowance and [REDACTED] is entitled to keep [REDACTED]'s income of \$265.

[REDACTED] gross monthly income is \$1,773.97, consisting of Social Security of \$807, and net rental income from the [REDACTED], [REDACTED], of \$729.71 and from [REDACTED], \$174.26 (documentation enclosed). This is less than his monthly medical insurance and household expenses (documentation previously provided). Consequently, Patient Pay Amount can be zero.

* * *

(12) In order to accurately determine [REDACTED] ability to pay her share of her long-term care expenses, the caseworker requested claimant's business records for the family's rental properties.

(13) On July 22, 2008, the caseworker sent [REDACTED] a DHS-3503 (Verification Checklist). The DHS-3503 states in pertinent part:

'Bring/send records of all income that you have...'

'Current bank statements for all savings, checking and money marketing accounts (DHS-20) Verification of Assets.'

'Statement from a nursing home of cash held for you.'

'Bring/send records of all assets you have.'

'Health or medical insurance premium proof.'

'Other--provide proof of any asset closed, transferred since August 2007.'

Due Date: August 4, 2008

* * *

(14) On [REDACTED] at the request of [REDACTED], the caseworker extended the due date for providing the required rental verifications pursuant to the July 22, 2008 DHS-3503 to August 11, 2008.

(15) Claimant did not submit his audited rental property records by the August 11, 2008 due date.

(16) On August 13, 2008, the caseworker sent a second Verification Checklist (DHS-3503). At [REDACTED] request, the caseworker extended the DHS-3503 deadline to September 4, and then to September 12, 2008.

(17) Claimant did not submit suitable documentation (audited by a third party) of the income and the expenses for the two apartment houses which were transferred from the [REDACTED] on [REDACTED] deadline.

(18) On September 10, 2008, the caseworker prepared a PPA for [REDACTED] based on the financial records supplied by [REDACTED] prior to September 12, 2008. The caseworker was unable to independently verify the accuracy of the income records provided by [REDACTED]. The rental records were not properly summarized in an Income and Expense Statement and were not properly audited by a third party. The caseworker did not use the rental records submitted by [REDACTED] because they were unaudited and speculative.

(19) [REDACTED] PPA amount for the October 2008-March 2009 eligibility period was \$265. Notice of the September 10, 2008 PPA was sent to claimant.

(20) On December 3, 2008, [REDACTED] sent additional financial information on claimant's behalf. His letter states in pertinent part:

* * *

We hereby appeal your eligibility notice dated September 10, 2008 (copy enclosed) indicating that [REDACTED] Patient Pay Amount is \$265 for the reason that [REDACTED] net monthly income is negative. This is less than the spousal minimum monthly maintenance needs allowance and [REDACTED] is entitled to keep Phyllis' income of \$265.

[REDACTED] gross monthly income is \$1,773.97 consisting of Social Security of \$807, and net rental income from [REDACTED], [REDACTED] of \$729.71, and from [REDACTED] of \$174.26 (documentation enclosed). This is less than the monthly medical insurance and household expenses (documentation previously provided). Consequently, Patient Pay Amount to be zero.

* * *

(21) The income information submitted by [REDACTED] on December 3, 2008 was self-serving, unreliable and unsuitable for use in the Patient Pay Computation. It was also untimely because the \$265 PPA was established on September 10, 2008.

(22) Prior to February 2, 2009, the information submitted by [REDACTED] regarding [REDACTED] rental income and expenses, was not suitable (because it was not audited, or independently verified), for use in determining [REDACTED] PPA.

(23) On February 2, 2009, the caseworker prepared a new Patient Pay Amount for [REDACTED] (\$293). The caseworker did not include any of [REDACTED] rental income or expenses because the information was self-serving and not verified by a third party, and not in the form of a profit and loss statement, that could be readily comprehended by the caseworker.

(24) On March 18, 2009, the caseworker reduced [REDACTED] PPA to \$243 from \$293 because claimant reported that [REDACTED] had a \$60 dental insurance expense.

(25) On March 18, the caseworker did not consider [REDACTED] rental income and expenses because [REDACTED] did not timely provide accurate, audited and easily understandable rental records for the caseworker to use, as she requested during the budget procedure in 2008.

(26) On April 20, 2009, claimant filed a timely hearing request to dispute the March 18, 2009 Patient Pay Amount of \$243.

(27) [REDACTED] thinks that if [REDACTED] rental income and expenses had been considered when the 2008 and 2009 PPA were computed that claimant's PPA would have been zero.

(29) The department thinks that the PPA budgets prepared in 2008 and 2009 are correct for the following reasons: (a) claimant did not submit the required rental income and

expense records by the due date established by the DHS-3503s issued in 2008; and (b) none of the rental records provided subsequent to the DHS-3503 due dates were independently audited, reliable, or understandable because they were not in the form of an Profit and Loss format and were not prepared by an independent certified accountant.

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).

Current manual policy regarding the verification of eligibility factors may be summarized as follows:

DEPARTMENT POLICY

All Programs

The local office must do **all** of the following:

- . Determine eligibility
- . Calculate the level of benefits.
- . Protect customer rights. BEM, Item 105, page 1.

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES:

The responsibility to cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. BAM, Item 105.

CLIENT COOPERATION:

The client is responsible for providing evidence needed to prove eligibility.

Clients must take actions within their ability to obtain verifications. The departments must assist when necessary. BAM 105.

The local office must assist clients who ask for help in completing forms or gathering verifications. Particular sensitivity must be shown when clients are illiterate, handicapped and not affluent in English. PAM 105.

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

Obtain verification when:

- Required by policy. PAM Item specified which factors under what circumstances verifications are required.
- Required as a local option. The department must be applied the same for every client.
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information needed by the client or third party. PAM Item 130.

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

Tell client what verification is required, how to obtain it, and the due date. Use the DHS-3503 Verification Checklist to request verification. PAM, Item 130.

Client must obtain required verification, but you must assist if he needs help or requests it. PAM, Item 130.

If needed, neither the client nor you can obtain verification despite a reasonable effort, use the best information

available. If no evidence is available use your best judgment.

Allow the client ten calendar days (or other time limit) specified in policy (to provide the verification you request). If the client cannot provide it despite a reasonable effort, extend the time limit at least once. PAM, Item 130.

Send the negative action notice when:

- . The client indicates a refusal to provide verification, or the time period has elapsed and the client has not made a reasonable effort to provide it. PAM 105.

Under current manual policy, MA-M applicants must cooperate with their caseworker in determination initial and ongoing eligibility. This includes completion of the necessary forms and reporting all earned and unearned income, as well as household composition.

Current MA-M policy does not permit a “good cause” exception to the MA-M verification requirements.

The preponderance of the evidence in the record shows that the department correctly requested verification of the claimant’s rental income and expenses to calculate [REDACTED].

[REDACTED] 2008 and 2009 PPA budgets. The caseworker gave claimant ample time (30 days in 2008) to provide the required verification. In 2008, claimant requested two additional extensions and both were granted.

The action taken by the department is correct for the following reasons:

- (a) Claimant did not submit the requested rental income and expense records, in a usable format, by the due date of September 11, 2008.
- (b) None of the rental records provided by claimant were independently audited or in a format that was understandable to the caseworker.

- (c) Claimant did not submit the DHS-20--the verification of assets (requested on August 13, 2008). As of this date, claimant has not submitted a completed DHS-42 (Verifications of Assets).

Therefore, the department correctly denied claimant's MA-M request for a change in the 2008 and 2009 PPAs. The department's action was correct.

Finally, there is no evidence on this record that the department's action in computing the 2008 and 2009 PPA amounts was arbitrary or capricious.

Given the complexity of claimant's rental business and the extensive use of Trusts, the caseworker correctly excluded claimant's rental business from the PPA calculations.

The caseworker simply excluded the rental information provided by [REDACTED] because the rental business appeared to be an attempt to circumvent MA eligibility rules.

After a careful and exhaustive review of the entire record, the Administrative Law Judge concludes that the 2008 PPA (\$265) and the 2009 PPA (\$243) are correct and appropriate.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly computed claimant's 2008 2009 Patient Pay Amounts, and properly excluded claimant's unverified and unreliable rental income and expense information.

Accordingly, the department's action is, hereby, **AFFIRMED**.

SO ORDERED.

/s/
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 18, 2010

Date Mailed: May 19, 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.

JWS/tg

cc:

