

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: 2009-30156
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 23, 2010
Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 conference hearing was held on March 23, 2010. Claimant was represented at the administrative hearing by attorney [REDACTED] of [REDACTED].

ISSUE

Did the DHS properly process claimant's MA Long Term Care application of February 27, 2009?

FINDINGS OF FACT

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

- (1) In February, 2009, claimant went into a long term care nursing home.
- (2) On 2/27/09 claimant applied for MA Long Term Care (LTC).

(3) On 2/16/09 claimant wrote two checks. One check was to the [REDACTED] [REDACTED] for [REDACTED]. The second check was to [REDACTED] for [REDACTED]. The checks cleared with the bank pursuant to a [REDACTED] bank statement on 3/4/09 and 3/2/09 respectively.

(4) The DHS determined that claimant had excess assets in February, 2009.

(5) In addition to some other gifting of [REDACTED] the department determined that claimant divested and applied the divestment penalty to March, April, and May, 2009.

(6) Claimant does not dispute the divestment penalty and that the divestment penalty should be for 3 months. Claimant disputes when the divestment penalty begins and argues that it should begin in February, 2009 and then applied to March and April instead of March, April, and May, 2009.

(7) On 4/14/09 the DHS issued a 1605 informing claimant was in excess assets for February, 2009; The department issued notice on 6/11/09 the divestment penalty was being applied to March, April, and May, 2009.

(8) On 6/15/09 claimant filed a hearing request.

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).

As already noted in the Findings of Facts, claimant does not dispute the fact that there is a divestment penalty and/or that the divestment penalty should last 3 months. Rather, claimant disputes when the department began to apply the divestment penalty. The department argues that claimant was in excess assets in February, 2009 and thus, the divestment penalty would not begin until March, 2009 and run for three months. Claimant argues that she would not be in excess assets in February, 2009, had the bank cashed the checks written February, 2009, in February, 2009. Un-refuted evidence on the record is that the checks were not cashed and did not clear the bank until March, 2009.

Relevant asset policy to the case herein states in part:

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.

Assets means cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). PEM, Item 400.

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.

An asset is countable if it meets the availability tests and is **not** excluded. 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.

The following types of assets are the only types considered for FIP, SDA, LIF, G2U, G2C, and AMP:

- . "CASH" (which includes savings and checking accounts)
- . "INVESTMENTS"
- . "RETIREMENT PLANS"
- . "TRUSTS." PEM, Item 400.

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. PEM, Item 400, p. 6.

Under the above cited authority, the issue in this case thus centers on when the funds are not considered available to claimant any longer under the law.

A check is an order from the drawer that the payor bank pay the payee a sum of money. 11 Am Jur 2d, Banks and Financial Institutions, Section 888. However, like most orders, this order can be countermanded at any time up until the time that the order has in fact, been executed--in the case of a check, by means of a "stop payment" order. 3 Michigan Civil Jurisprudence, Banking and Money Affairs, Section 110. A stop payment order prohibits the payor bank from debiting the drawer's account. 11 Am Jur 2d, supra, Section 966. The funds in the account that otherwise would have been necessary to pay the check remain available to the drawer.

It is not until the payee presents the check for payment, the payor bank pays the payee, and the check “clears” the payor bank that the funds in the drawer’s account that are necessary to pay the check are no longer “available” to the drawer.

Counsel did not have any contrary authority which would indicate that claimant did not have the money available to her in February, 2009. Under the above cited authority, this Administrative Law Judge must find that the funds were available to her until the bank disbursed the checks and is commonly interpreted. This reading under the above cited legal authority holds and the department’s actions are upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department correctly processed and applied the excess asset policy to February, 2009, and, correctly applied the divestment penalty policy for the months of March, April, and May, 2009, pursuant to claimant's February, 2009, LTC application.

Accordingly, the department's actions are upheld.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 22, 2010

Date Mailed: April 23, 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 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.

JS/lk

cc:

