

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. 200930656
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 24, 2010
Luce County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 held on Tuesday, August 24, 2010. The claimant was not present, but was represented by her attorney, [REDACTED]

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA) based upon the fact that the claimant had excess assets?

FINDINGS OF FACT

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

1. On February 27, 2009, the claimant applied for MA with retroactive benefits to January 2009. Department Exhibit A-H.
2. The claimant's daily balance in her checking account for the month of January 31, 2009 was [REDACTED]. Department Exhibit L.
3. There was a check submitted dated January 26, 2009 for [REDACTED] to her attorney. Department Exhibit J.
4. On January 27, 2009, there was a check written to [REDACTED] for a 37" HD LCD TV in the amount of [REDACTED]. Department Exhibit K.

5. On June 22, 2009, the department caseworker calculated the claimant's eligibility for MA to determine that she had excess assets in the amount of [REDACTED] in her checking account. Department Exhibit L-O.
6. On June 22, 2009, the department caseworker sent the claimant and her attorney notice that the claimant did not qualify for MA benefits for January 2009 because her countable assets were more than the \$2,000 asset limit. Department Exhibit B.
7. On June 30, 2009, the department received a hearing request from the claimant's attorney, contesting the department's negative action.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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).

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.

Assets must be considered in determining eligibility for MA categories. The department has to consider cash, investments, retirement plans, and trusts. BEM Item 400, p. 1. Assets mean cash, any other personal property, and real property. BEM Item 400, p.1. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability test and is not excluded. BEM Item 400, p. 1. In the instant case there was no argument as to how much the claimant had in her account.

MA ASSET ELIGIBILITY

LIF, G2U, G2C, AMP and SSI-Related MA Only

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories. PEM, Item 400, p. 3.

Note: Do not deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification

requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.

(1)

Use the special asset rules in PEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and PEM 106 for the definition of waiver patient.

(2)

Asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. PEM 400.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. PEM, Item 400, p. 4.

SSI-Related MA Asset Limit

(3)

SSI-Related MA Only

For Freedom to Work (PEM 174) the asset limit is \$75,000. IRS recognized retirement accounts (including IRA's and 401(k)'s) may be of unlimited value.

For Medicare Savings Program (PEM 165) and QDWI (PEM 169) the asset limit is:

- . \$4,000 for an asset group of one
- . \$6,000 for an asset group of two

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one
- . \$3,000 for an asset group of two. PEM, Item 400, p. 4.

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. PEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. PEM, Item 400, p. 6.

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.

The claimant's grievance centers on dissatisfaction with the department's current policy. 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).

A preponderance of the evidence on the record establishes that the claimant had countable available assets in excess of \$2,000 on the date of her application. Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's MA for the month of January 2009 due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined the claimant's MA benefits for January 2009 should be denied based upon the fact that the claimant possessed excess assets. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: September 28, 2010

Date Mailed: September 28, 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.

CGF / vc

cc:

