

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: 2009-31733
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 October 7, 2009. Claimant is in long-term care and was represented at the hearing by her guardian, [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance benefits based upon its determination that claimant had excess assets?

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 resides in a long-term facility and was receiving QMB.
- (2) A required yearly redetermination was due in June 2009.

(3) A Verification Checklist was mailed on May 11, 2009, June 5, 2009, and June 18, 2009 requesting information about claimant's income and assets.

(4) The case was placed into negative action as of June 18, 2009 when no required verification information was received. On June 30, 2009, claimant's QMB case was closed and because the required verifications needed to verify ongoing eligibility were not provided.

(5) The department determined that claimant owns two life insurance policies with

██████████.

(6) On June 4, 2009 verification was provided showing that the beneficiary of the two policies was changed to ██████████

(7) The cash surrender value was still required because the claimant still owns the policies.

(8) Proof of the cash surrender value was provided after case closure.

(9) These documents show that the claimant has excess assets for the Medicaid program.

(10) On June 18, 2009, the department caseworker sent claimant's guardian notice that claimant's application would be denied for failure to provide verification information and based upon excess assets.

(11) On July 9, 2009, the claimant's guardian filed a request for a hearing to contest the department's negative action.

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).

Department policy dictates:

ASSETS

DEPARTMENT POLICY

FIP, SDA, LIF, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, SSI-Related MA, and AMP

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 Defined

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.

Overview of Asset Policy

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.

Per Medicare Savings Plan (PEM, Item 165) and QDWI (PEM, Item 169), the asset limit is \$4,000 for an asset group of one person and for all other assets that are in related categories the asset limit is \$2,000 for an asset group of one person. PEM, Item 400, p. 4. An asset must be available to be counted. Available means that someone in the asset group has the legal right to use or dispose of the assets. PEM, Item 400, p. 6.

Prepaid Funeral Contract

SSI-Related MA and AMP

A prepaid funeral contract means a contract requiring payment in advance for funeral goods or services. Contracts may be revocable or irrevocable. PEM, Item 400, p. 29.

Revocable Prepaid Funeral Contract Exclusions and Value

SSI-Related MA and AMP

Funds in a revocable prepaid funeral contract might be excludable using the "**Burial Fund Exclusion**" and/or the "**SSI-Related MA Burial Space Exclusion**" above.

The countable amount of the contract is the amount remaining on deposit after:

- . those exclusions, and
- . any commission or fees that would be charged upon withdrawal. PEM, Item 400, p. 30.

Irrevocable Prepaid Funeral Contracts

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

Funds in an **irrevocable** prepaid funeral contract are unavailable and thus are **not** counted. PEM, Item 400, p. 29.

Note: Funds in a Michigan contract (DHS-8A, Irrevocable Funeral Contract Certification) certified irrevocable are excluded. PEM, Item 400, p. 30.

Life Insurance Funded Funeral

SSI-Related MA Only

A funeral plan can be funded using life insurance. A person purchases a life insurance policy and directs the proceeds to be used to pay for his funeral. In addition, the person might irrevocably/permanently transfer ownership of the policy to:

- . a trust, or
- . a funeral director who then transfers ownership to a trust.
PEM, Item 400, p. 30.

Note: An annuity can be used in the same way to fund a funeral plan. PEM, Item 400, p. 30.

Proceeds of a life insurance policy means the face value of the policy plus any additions payable at maturity or death. Proceeds are reduced by the amount of outstanding loans against the policy and "**Accelerated Life Insurance Payments.**" (See PEM 500). PEM, Item 400, p. 30.

A funeral plan funded with life insurance is **not** a prepaid funeral contract per PAM 805. PEM, Item 400, p. 30.

Life Insurance Not Irrevocably Transferred

SSI-Related MA Only

If a person has directed the proceeds of a life insurance policy be used to pay for his funeral, but has **not** irrevocably transferred ownership, the policy is treated as life insurance. PEM, Item 400, p. 30.

Life Insurance Irrevocably Transferred

SSI-Related MA Only

Use the following when a person directs that the proceeds of a life insurance policy be used for his funeral **and** has **irrevocably** transferred ownership of the policy. Do this even if the person retains the right to change funeral providers, items or services.

- . Do **not** count the cash surrender value of the policy as an asset effective the month of transfer.
- . Do not count the funeral contract as an asset.
- . Do not apply policy in PEM 401, Trusts - MA.
- . Do not consider the ownership transfer as divestment when:
 - .. the proceeds are still to be used to pay the insured's funeral expenses, and
 - .. the value of the goods and services contracted for at least equals the cash surrender value of the insurance, and
 - .. the new owner **cannot** use the cash surrender value of the insurance policy for himself.

Note: If the value of the goods and services contracted for is less than cash surrender value of the insurance, the difference is transferred for less than fair market value. PEM, Item 400, p. 31.

In the instant case, this asset is available and it must be counted based upon the fact that the life insurance policy proceeds contract is still able to be revoked by the claimant. Claimant does retain the legal right to use or dispose of the asset. Therefore, the department's determination of excess assets must be upheld under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant's listed assets may be counted on as accurate and it was

determined that claimant had an excess of \$4,000 in assets. The department properly denied claimant's application for Medical Assistance benefits under the circumstances and determined that claimant had in excess of \$4,000 in countable available assets.

Accordingly, the department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 20, 2009

Date Mailed: October 20, 2009

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.

LYL/vmc

cc:

