

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: 2009-32312

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 16, 2009

Macomb 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 December 16, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) 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) On January 5, 2009, a MA application was filed on claimant's behalf by [REDACTED]

(2) A MA LOA budget was computed on February 26, 2009.

(3) The department caseworker determined that claimant was not eligible to receive Medical Assistance benefits due to excess assets of [REDACTED]

(4) The asset limit for a person in claimant's circumstances is \$3,000.

(5) A DHS-4400, Application Eligibility Notice, was mailed to the claimant on February 26, 2009 notifying her that she was not eligible to receive the benefits.

(5) [REDACTED], the appointed representative, was also mailed a copy of the notice on April 6, 2009.

(6) On May 20, 2009, [REDACTED] filed a hearing request withdrawal stating that they understood that the action taken by the Department of Human Services was correct.

(7) On July 1, 2009, claimant showed up for a scheduled hearing, but because the case had been withdrawn by the representative, no hearing was held.

(8) The hearing was reinstated and held on December 16, 2009.

(9) Claimant filed a request for a hearing on March 30, 2009 on the original notice and on July 1, 2009 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).

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.

An asset converted from one form to another (example: an item sold for cash) is still an asset. PEM, Item 400, p. 1.

FIP, SDA, LIF, G2U, G2C, and AMP Only

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.

SSI Related MA

All types of assets are considered for SSI-related MA categories. PEM, Item 400, p. 2.

FIP/SDA/AMP Asset Group

FIP, SDA and AMP Only

The asset group is the program group. See PEM 210 and 214. PEM, Item 400, p. 3.

FIP and SDA Asset Limit

FIP and SDA Only

\$3,000. PEM, Item 400, p. 3.

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.

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.

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.

LIF Asset Limit

LIF Only

\$3,000. PEM, Item 400, p. 4.

CASH

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

This section is about the following types of assets:

- . Money/currency
- . Uncashed checks, drafts and warrants
- . Checking and draft accounts
- . Savings and share accounts
- . Money market accounts
- . LTC patient trust fund
- . Money held by others--**Example:** Sally does **not** have a bank account. She puts money in her mother's checking account, but it is **not** a joint account.
- . Time deposits--A **time deposit** is a contract between a person and a financial institution whereby the person agrees to leave funds on deposit for a specified period in return for a specified interest rate. Common time deposits are certificates of deposit (CDs) and savings certificates. PEM, Item 400, p. 9.

In the instant case, the facts are not at issue. Claimant admits that she had [REDACTED] in the account on the date of application for the month of November 2008 and December 2008.

Therefore, claimant had in excess of \$3,000 in countable available assets at all times relevant to

the January 5, 2009 application. The asset limit for a person in claimant's circumstances is \$3,000. Claimant had excess assets for purposes of Medical Assistance benefit eligibility.

Claimant and her husband testified on the record that she felt that she was treated unfairly because the hearing was cancelled in her absence and they are trying to get benefits for claimant, who has health problems. It was explained to claimant that she needs to file an application based upon disability and a determination would be made for that case. This Administrative Law Judge has no equity powers.

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).

Under the circumstances, claimant had in excess of \$3,000 in countable available assets on the date of application. Therefore, the department's decision must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant had in excess of \$3,000 in countable available assets at all times relevant to the January 5, 2009 Medical Assistance application. Therefore, the department's determination that claimant had excess assets was correct.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: January 4, 2010

Date Mailed: January 4, 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.

LYL/vmc

cc:

