

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.: 2009-32423

Issue No.: 2023

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

March 18, 2010

Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on March 18, 2010. The Claimant personally appeared and testified and was represented by his attorney [REDACTED].

ISSUE

Did the department properly deny the claimant's Medical Assistance (MA)?

FINDINGS OF FACT

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

1. On July 16, 2007, The Department made a determination that the Claimant's assets were in excess of the asset limit. (Department's exhibit7).
2. On July 25, 2007, The Claimant, through his attorney, filed a request for a hearing.

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 (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).

Here, the issue is whether funds in a 401K plan owned by the community spouse, should be counted as an asset.

**Retirement Plan Value  
FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

The value of these plans is the amount of money the person can currently withdraw from the plan. Deduct any early withdrawal penalty, but not the amount of any taxes due.

Funds in a plan are **not** available if the person must quit his job to withdraw any money. (PEM 400, p. 15)

In the instant case the claimant provided evidence that the profit sharing 401K plan was not available to the claimant before her retirement.

This ALJ finds that erred in including the claimant's 401K in her countable assets.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, REVERSES and ORDERS the Department to refigure the Claimant's assets without including the amount of the claimant's 401K plan.



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Michael J. Bennane  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 4/20/2010

Date Mailed: 4/20/2010

**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.

MJB/jlg

cc:

