

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: 2009-32497

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 15, 2009

Van Buren 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 claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, December 15, 2009. The claimant is deceased, but was represented by his wife [REDACTED] and authorized representative [REDACTED]

ISSUE

Did the department properly deny the claimant's Medical Assistance (MA) application based upon its determination 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 as material fact:

- (1) The claimant died on [REDACTED], while hospitalized.
- (2) On March 7, 2007, the department received an application on behalf of the claimant with retroactive benefits to January 2007. (Department Exhibit 19-20, 21-22, 27, 1-6)
- (3) On April 10, 2007, the department caseworker calculated the claimant's eligibility for MA based on a checking account of \$874 at [REDACTED] and a checking account of \$3,185.82 at [REDACTED] (Department Exhibit 28-29) for total countable assets of \$4,059.82 to determine that the claimant had excess income for MA, which had an asset limit of \$3,000. (Department Exhibit 11-14)
- (4) On April 10, 2007, the department caseworker sent the claimant's wife and the claimant's authorized representative a notice that the claimant was not eligible for MA from January 1, 2007 to January 31, 2007 because the claimant's countable assets were more than the \$3,000 asset limit. (Department Exhibit 10)
- (5) On July 12, 2007, a pre-hearing conference was conducted regarding the claimant being over the asset limit for MA eligibility.
- (6) During the hearing, the claimant's authorized representative stated that they should have been allowed to buy an irrevocable funeral contract in order to make the claimant eligible for MA.
- (7) During the hearing, the department's Family Independence Manager (FIM) stated that the department is not allowed to give advice to claimants about what they need to do to become eligible for MA benefits. The department's stand is that the denial notice stating that the claimant was over the asset limit gave the claimant's wife and his authorized representative notice that they could have purchased an irrevocable funeral contract to make the claimant eligible for MA, but the department could not advise the claimant's wife or the authorized

representative to do so. The FIM stated that if the claimant's wife had bought an irrevocable funeral contract that the department would have reprocessed the claimant's MA and redetermined eligibility.

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).

The department's program eligibility manual provides the following relevant policy statements and instructions for caseworkers:

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.

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.

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

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.

Assets must be considered in determining eligibility for SSI-Related MA categories. The department has to considered cash, investments, retirement plans, and trusts. Assets mean cash, any other personal property, and real property. PEM, 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. PEM, Item 400, p. 1. In the instant case, there was no argument as to how much the claimant had in his two checking accounts.

A preponderance of the evidence on the record establishes that the claimant had countable assets in excess of \$3,000 on the date of his application. The MA asset limit for a person in the claimant's circumstances was \$3,000. Therefore, this Administrative Law Judge concludes that the department correctly denied the claimant's MA application 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 that the claimant's application for MA benefits should be denied based upon the fact that the claimant possessed excess assets.

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

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

Date Signed: January 12, 2010

Date Mailed: January 12, 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/vmc

cc:

