

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: 2009-3515
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 2009
Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 conference hearing was held on September 1, 2009.

ISSUE

Did the Department of Human Services (DHS) properly propose to close claimant's Medical Assistance (MA-P) case on the grounds that claimant's countable assets are higher than the maximum allowed for the MA-P program?

FINDINGS OF FACT

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

(1) At all relevant times prior to the proposed negative action herein, claimant was an MA-P recipient with the Michigan DHS.

(2) Claimant's case was reviewed for her yearly review in June, 2008. At that time, verifications included a Michigan title showing claimant purchased a 2007 Jeep for \$17,000 in cash.

(3) On 6/2/08, the department called claimant on the phone inquiring about the source of the \$17,000 cash for the purchase of the vehicle. Claimant indicated that she had received a lump sum home insurance settlement of \$115,000 for a house that was destroyed by fire, and, gambling winnings of over \$3,000 in 2007. Exhibit 1.

(4) Claimant does not own a home. The \$115,000 was a lump sum payment paid by the insurance company. The insurance was in claimant's name on a home which claimant had no legal interest in. Claimant did not own the homestead. The homestead was in claimant's grandmother's name. Claimant's grandmother is deceased.

(5) The asset limit for the MA-P program for a fiscal group of one is \$2,000.

(6) On 6/2/2008, the DHS issued a notice to close claimant's MA-P case on the grounds that claimant's assets exceeded the maximum allow value for the MA-P program.

(7) Claimant requested a timely hearing on 6/11/2008. The department reinstated the action. Claimant continues to receive MA-P benefits.

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).

Under asset policy and procedure, individuals who receive insurance proceeds in a one-time payment are considered to have received a "lump sum." PEM Item 400, p. 10. Lump sums

may be excluded in certain instances. See PEM Item 400, p. 11. Policy specifically allows for the exclusion of insurance proceeds including lump sums for the loss of the homestead where certain conditions are met. One of those conditions requires that an individual have a legal interest in the homestead. However, in this case, unrefuted evidence on the record is that claimant had no legal interest in the property. Claimant did not own the property. While claimant had insurance on the property, claimant did not have a legal interest in the property. In order for a homestead to be excluded, there must be a legal interest in the property, and not just an insurance policy. See PEM Item 400. Thus, the department properly proposed to close claimant's case.

The asset limit for the MA program for which claimant is receiving welfare benefits is \$2,000 for a group of one pursuant to PEM Item 400, p. 5.

The department indicated that it denied claimant on the basis of PAM Item 130, p. 1--the department is allowed to take a client's statement and verification is not required where there is clear ineligibility. This Administrative Law Judge is not inclined to disagree with the department where the DHS' actions were reasonable and not contrary to law or policy. Further, this Administrative Law Judge has no authority to find a legal interest where such would be a legal fiction.

For these reasons, and for the reasons stated above, the department correctly proposes to close claimant's MA pursuant to the 6/2/08 notice.

It is noted that claimant submitted a lengthy letter from claimant's prior attorney. That letter made great issue out of the department exceeding its standard of promptness on a subsequent reapplication for MA by not processing that application. Neither the letter nor claimant cited any authority which would require the department to process an MA application where claimant is receiving full MA benefits and has an open and active MA case. There was no standard of promptness violation. Even so, the standard of promptness is generally considered a

right without a remedy. However, claimant's MA case never closed. Claimant was receiving full Medicaid at that time, and continues to receive full Medicaid to date.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed closure of claimant's MA-P was correct.

Accordingly, the department's proposed closure is hereby UPHeld.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 14, 2009

Date Mailed: September 16, 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 mailing date of the rehearing decision.

JS/cv

cc:

