

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED], Claimant
by [REDACTED],
Guardian

Reg. No.: 2009-35676
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 1, 2010
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 hearing was held on April 1, 2010. Claimant was represented by her Guardian, [REDACTED].

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant has excess assets for purposes of Medical Assistance (MA) eligibility?

FINDINGS OF FACT

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

- 1) When claimant retired, in lieu of a pension, she accepted an [REDACTED] IRA.
- 2) On May 31, 2009, the IRA was valued at \$167,669.35 and provided claimant with a monthly distribution of \$1,283.69. (Department Exhibit #3.)

- 3) Claimant has the right to withdraw money from her [REDACTED] IRA, but she would be heavy penalized for early withdrawal.
- 4) Claimant currently resides in a long-term care facility and is a recipient of MA.
- 5) On August 3, 2009, the department notified claimant that her MA would be closing effective August 14, 2009, because her countable assets were in excess of the \$2,000 asset limit.
- 6) At the hearing, the parties agreed that the issue was whether claimant's Ameriprise Financial IRA was a countable asset for purposes of MA 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).

Relevant policy is as follows:

Assets must be considered in determining eligibility for ... SSI-related MA categories ...

Assets means cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as building, 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). BEM Item 400, Page 1.

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

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. BEM Item 400, Page 6.

RETIREMENT PLANS

This section is about the following types of assets:...

- Individual retirement accounts (IRAs)....

Retirement Plan Value

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.

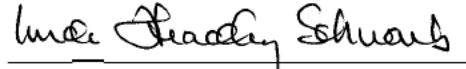
Funds in a plan are **not** available if the person must quit his job to withdraw any money. BEM Item 400, Page 15.

In this case, claimant currently has the ability to withdraw funds from her [REDACTED] [REDACTED] IRA, although early withdrawal would result in a heavy penalty. Per policy at BEM Item 400, Page 15, the money that claimant could withdraw from this IRA minus early withdrawal penalties, is countable for purposes of MA eligibility. Also see 42 CFR 435.840-845. Accordingly, the department's determination in this matter must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant has

excess assets for purposes of Medical Assistance eligibility. Accordingly, the department's decision in this matter is hereby affirmed.


Linda Steadley Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 6, 2010

Date Mailed: April 6, 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.

LSS/pf

cc:

