

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: 2009-36804

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 2, 2010

Iosco 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 three-way telephone hearing was held on Tuesday, February 2, 2010. The claimant was not present, but was represented by her attorney [REDACTED]. The claimant also had her husband, [REDACTED] and daughter [REDACTED] as witnesses.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA) 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) On January 8, 2009, the claimant was admitted into a nursing home.

(2) The claimant's spouse first filed an application on January 9, 2009, but never followed through with what was required and withdrew his hearing request.

(3) A second application was filed on March 19, 2009, the claimant applied for MA. (Department Exhibit 1-6)

(4) On July 31, 2009, the department caseworker did an initial asset assessment of combined resource details (Department Exhibit 7-8):

- The claimant's spouse had liquid assets of \$4,377.36 and a life insurance policy with a cash surrender value of \$24,817.12 resulting in a total countable resource amount of \$29,194.48..
- The claimant had total countable resource amount of \$605.50.

(5) On July 31, 2009, the department caseworker determined that the claimant had excess assets because (Department Exhibit 9):

- The claimant and spouse had a total asset amount of \$29,522.85 from life insurance of \$24,817.12 and liquid assets of \$4,705.73.
- The claimant's total protected resource amount was \$21,912.
- The claimant's total countable resource amount was \$7,610.85 from the total asset amount of \$29,522.85 minus the spousal protected resource amount of \$21,912.

(6) On July 31, 2009, the department caseworker sent the claimant a notice that the claimant's countable assets must be at or below the Medicaid asset limit of \$2,000 at the end of one year. The Medicaid asset limit is \$4,000 instead of \$2,000 if the claimant's Medicaid coverage is limited to paying Medicare premiums, coinsurances and deductibles. The claimant has one year to complete the transfer of assets to the spouse. This period will not be extended if the amount that needs to be transferred changes. At the end of one year, the value of assets that

the claimant owns must be at or below the Medicaid asset limit for the claimant to remain eligible for Medicaid. If the value of the claimant's assets increases or if the claimant receives new assets during the year, these additional assets may also need to be transferred before the one-year period ends. Be sure to read the Special Rules on the back about the one-year period.

(Department Exhibit 19-20)

(7) On July 31, 2009, the department caseworker sent the claimant a notice that she was approved for Medicaid from May 1, 2009 through July 31, 2009, but denied starting August 1, 2009 ongoing. The letter stated that the claimant's Medicaid coverage had been cancelled, but that she would continue to receive medical benefits through the day before the period listed above. The reason the claimant was not eligible was because she failed to verify or allow the department to verify information necessary to determine eligibility for this program.

(Department Exhibit 12-15)

(8) On August 11, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(9) On August 12, 2009, the claimant's spouse submitted to the department caseworker a statement of cash value and withdrawal of the life insurance policy of \$20,418.

(Claimant Exhibit B)

(10) On August 19, 2009, the claimant's spouse bought an irrevocable funeral contract for the claimant and himself in an amount totaling \$20,500. (Claimant Exhibit C-D)

(11) On September 2, 2009, the department caseworker sent the claimant a notice that MA was approved from August 1, 2009 ongoing. (Claimant Exhibit E)

## 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 manuals provide the following relevant policy statement 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.

## **LIFE INSURANCE**

### **SSI-Related MA**

A **life insurance policy** is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. Pure Endowment Life Insurance Contracts pay out on a specific date in the future not just when the beneficiary dies, and does not meet the definition of life Insurance for Medicaid. PEM, Item 400, p. 23.

### **Life Insurance Definitions**

#### **SSI-Related MA**

**Cash surrender value (CSV)** - the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value or the cash value. PEM, Item 400, p. 24.

**Face value (FV)** - the amount of the basic death benefit contracted for at the time the policy is purchased. It might be titled the face value, face amount, amount of insurance, amount of policy or sum insured. It does **not** include dividends or additional amounts payable because of accidental death or other special circumstances. PEM, Item 400, p. 24.

**Insured** - the person whose life the policy insures. PEM, Item 400, p. 24.

**Insurer** - the company that contracts with the policy owner. PEM, Item 400, p. 24.

**Policy owner** - the person who has the right to change the policy. This is usually the person who pays the premiums. The policy owner and the insured can be different people. PEM, Item 400, p. 24.

### **Life Insurance Value**

#### **SSI-Related MA**

A life insurance policy is an asset if it can generate a CSV. A policy is the policy owner's asset.

- . A policy's value is its CSV. A policy can generate a CSV, but have a CSV of zero. Such a policy is an asset with zero value.
- . Generally, term insurance does **not** have a CSV. Whole or straight life policies generate a CSV.
- . The CSV usually increases over time. A loan against a policy reduces its CSV. Pre-death payment of the death benefit might reduce the CSV. See "**Accelerated Life Insurance Payments**" in PEM 500 about the payments received.
- . CSV and FV are **not** the same thing. PEM, Item 400, p. 24.

### **LIFE INSURANCE EXCLUSIONS**

#### **General SSI-Related MA Life Insurance Exclusion**

##### **SSI-Related MA Only**

Look at each policy owner's life insurance separately.

Exclude the entire cash surrender value when the total **face values** of all policies a policy owner has for the **same insured** are \$1,500 or less. PEM, Item 400, p. 25.

**Exceptions:** Do **not** count the face value of:

- . Term insurance that does **not** generate a CSV.
- . Burial insurance. Burial insurance is an insurance policy whose terms prevent the use of its proceeds for anything other than payment of the insured's burial expenses. A policy

is **not** burial insurance if the policy has a CSV the owner can access. A policy used for "**Life Insurance Funded Funerals**" below is **not** burial insurance. Michigan does not have burial insurance, but a person from another state could have such insurance.

- . Endowment policies. An **Endowment policy** is a policy which enables the insured to accumulate a sum of money payable to him at a date named in the policy (the maturity date). The policy says whether the money is paid over time or all at once. The policy matures on the maturity date. A matured endowment policy is **not** life insurance. PEM, Item 400, p. 25.

The claimant's spouse applied on March 19, 2009, which would require the department to have an answer for him within 45 days based on policy. On July 31, 2009, the department caseworker sent a notice that the claimant was eligible for the Adult Medical Program (AMP) from May 1, 2009 through July 31, 2009. The claimant did not apply for AMP, but had applied for MA. The reason given for the ongoing denial was that the claimant failed to verify or allow the department to verify information necessary to maintain eligibility for this program of the AMP. A notice for a denial for MA was not sent to the claimant.

This Administrative Law Judge finds that with an application of March 19, 2009 with the 45 day follow through timeliness factor as required by department policy, the claimant could have been at least eligible for MA for the month of May 2009. Therefore, this Administrative Law Judge will approve the claimant for the contested time period of May 2009 to July 2009. The department caseworker approved the claimant for MA for August 2009 forward. The department would not have been able to process the claimant's March 19, 2009 application any quicker where she could have cashed in the life insurance policy and been eligible within the month of May 2009. As a result, the claimant will be required to pay for the month of April 2009 in the amount of \$2,743.



DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately deny the claimant's MA benefits from April 2009 to July 2009. The claimant is eligible for benefits starting in May 2009 ongoing. The claimant is responsible for her nursing home bill for April 2009.

Accordingly, the department's decision is **REVERSED**. The department is ordered to process the claimant's MA benefits from May 2009 forward.

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

Date Signed: May 13, 2010

Date Mailed: May 14, 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/vc

cc:

