

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: 2009-5002
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 July 2, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) based upon the fact that claimant possessed 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 October 20, 2008, claimant completed an application and provided verification of income and assets for a re-determination application for MA.

(2) On October 24, 2008, the re-determination budget was completed resulting in excess assets for purposes of MA.

(3) The budget was determined to be incorrect because claimant's wife's income was not included in the budget.

(4) On November 5, 2008, a second budget was completed which included claimant's wife's income.

(5) Based upon the budget, claimant had excess income for the Medicare Savings Program and excess assets for regular Medicaid.

(6) On October 24, 2009, the department caseworker sent claimant notice that his MA case would be cancelled based upon excess assets.

(7) On November 3, 2008, claimant filed a request for a hearing to contest the department negative action.

(8) The negative action was deleted, pending the hearing.

(9) The facts were not disputed.

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).

Department policy dictates:

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.

Overview of Asset Policy

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but **not** for another program. Some programs do **not** count assets (see “PROGRAMS WITH NO ASSET TEST” below).

You must consider the following to determine whether, and how much of, an asset is countable.

- . Availability
 - .. see “AVAILABLE”
 - .. see “JOINTLY OWNED ASSETS”
 - .. see “NON-SALABLE ASSETS”

Exclusions. PEM, Item 400, p. 1.

An asset is countable if it meets the availability tests and is **not** excluded. PEM, Item 400, p. 1.

You must consider the assets of each person in the asset group. See the program's asset group policy below. PEM, Item 400, p. 1.

An asset converted from one form to another (example: an item sold for cash) is still an asset. PEM, Item 400, p. 1.

FIP, SDA, LIF, G2U, G2C, and AMP Only

The following types of assets are the only types considered for FIP, SDA, LIF, G2U, G2C, and AMP:

- . "CASH" (which includes savings and checking accounts)
- . "INVESTMENTS"
- . "RETIREMENT PLANS"
- . "TRUSTS." PEM, Item 400.

SSI Related MA

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

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.

JOINTLY OWNED ASSETS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

Jointly owned assets are assets that have more than one owner.

Note: For FTW determinations, jointly owned assets are considered to belong to the initial person.

An asset is unavailable if an owner **cannot** sell or spend his share of an asset:

- . without another owner's consent, and
- . the other owner is not in the asset group, and
- . the other owner refuses consent.

Exception: In SSI-related MA, when ownership is shared by an SSI-related child and his parent(s) **and** parental asset deeming

applies, refusal to sell by either the child or the parent(s) does **not** make an asset unavailable.

Ownership documents for jointly owned real property commonly use one of four phrases:

- . **Joint Tenancy:** no owner can sell unless all owners agree.
- . **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.
- . **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- . **Tenancy-in-Common:** each owner can sell his share without the other owner's agreement. PEM, Item 400, p. 7.

Joint Cash and Retirement Plans

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This section applies to the types of assets listed under "**CASH**" and "**RETIREMENT PLANS**" below.

Count the entire amount **unless** the person claims and verifies a different ownership. Then, each owner's share is the amount he owns.

SSI-Related MA Only

Exception: Apply the following when an L/H or waiver patient (see PRG, Glossary, and PEM 106) and his spouse jointly own the asset:

- . Consider the client the sole owner in determining the community spouse resource allowance (CSRA). PEM 402 describes the CSRA.
- . Proceed as follows for all other purposes:
 - .. If the spouse is an MA-only client or receives FIP or SSI, each spouse owns an equal share unless otherwise claimed and verified.

- .. If the spouse is **not** an MA-only client and does **not** receive FIP or SSI, consider the asset totally available unless otherwise claimed and verified.

Exception: Count equal shares of an asset owned by more than one SSI-related MA child unless the person claims and verifies a different ownership.

Exception: If the owners are an SSI-related MA child and his parent(s) and asset deeming applies, count the total amount as the child's unless the person claims and verifies a different ownership. PEM, Item 400, pp. 7-8.

Other Joint Assets

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This applies to all assets that are **not** included under "**CASH**" or "**RETIREMENT PLANS**".

Count an equal share for each owner.

Exception: If specified otherwise by the ownership document, each owner's share is the amount specified. PEM, Item 400, pp. 7-8.

NON-SALABLE ASSETS

SSI-Related MA Non-Salable Assets

SSI-Related MA Only

Do **not** count an asset when it has no current market value as shown by the following:

- . Two knowledgeable sources (example: realtor, banker, stockbroker) in the owner's geographic area state that the asset is **not** salable due to a specific condition. This applies to any assets listed under:
 - .. "INVESTMENTS"
 - .. "HOMES AND REAL PROPERTY"
 - .. "VEHICLES"
 - .. "Burial Space Defined"
 - .. "EMPLOYMENT AND TRAINING ASSETS" PEM, Item 400, p. 8.

Retroactive SSI Benefits

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

Retroactive SSI benefits may be paid as a one-time payment or in installments over several months. The Social Security Administration determines how payment will be made.

Retroactive SSI benefits are treated as accumulated benefits (see above) even when paid in installments. See “Retroactive RSDI and SSI Exclusion” below for SSI-related MA determinations. PEM, Item 400, p. 10.

SPECIAL MA ASSET RULES

DEPARTMENT POLICY

MA Only

Unless the “**SPECIAL EXCEPTION POLICY**” below applies, an initial asset assessment is needed to determine how much of a couple’s assets are protected for the community spouse. Do an initial asset assessment when one is requested by either spouse, even when an MA application is **not** made. See “**DEFINITIONS**” and “**INITIAL ASSET ASSESSMENT.**”

FIP-Related MA Only

There is no asset test for Group 2 FIP-related MA and Healthy Kids categories.

It may be necessary to do an SSI-related MA determination in the future if such FIP-related MA eligibility ends. Therefore, initiate an initial asset assessment for an L/H or waiver client with a community spouse if one has not already been done. However, do **not** deny/terminate a Group 2 FIP-related or Healthy Kids MA category if the client chooses not to cooperate with the initial asset assessment. Also, do **not** delay authorizing MA while completing an initial asset assessment. See “**DEFINITIONS**” and “**INITIAL ASSET ASSESSMENT.**” PEM, Item 402, p. 1.

SSI-Related MA Only

Use this item to determine asset eligibility for **each** continuous period of care (see “**DEFINITIONS**” below) that began on or after 9-30-89 when an L/H or waiver client:

- . has a community spouse (see below), **and**
- . a presumed asset eligible period has **not** yet been established, **or**
- . if established, the presumed asset eligible period has **not** ended. See "**Presumed Asset Eligible Period.**"

Use PEM 400 to determine asset eligibility for clients who do **not** meet the above conditions. PEM, Item 402, p. 1.

SPECIAL EXCEPTION POLICY

Do **not** do an "**INITIAL ASSET ASSESSMENT**" (see below), even if the client or community spouse requests it, and do **not** do "**Initial Eligibility**" (see below) when at the time a client becomes an L/H or waiver client:

- . he/she is already eligible for, and receiving, SSI-related MA, and
- . one or both of the following is true:
 - .. The client's asset group for SSI-related MA included his/her spouse who is now the community spouse.
 - .. The community spouse is eligible for, and receiving, SSI-related MA from Michigan, including as an SSI recipient.

The client is considered asset eligible; therefore:

- . Begin the client's "Presumed Asset Eligible Period".
- . Do **not** compute a community spouse resource allowance.
- . Do **not** send an DHS-4588, Initial Asset Assessment Notice; DHS-4586, Asset Transfer Notice; or DHS-4585, Initial Asset Assessment and Asset Record. PEM, Item 402, p. 2.

DEFINITIONS

MA Only

Community spouse – Client's spouse when the spouse:

- . has **not** been, and is **not** expected to be, in a hospital and/or LTC facility for 30 or more consecutive days; and
- . for waiver client only, the spouse is **not** also approved for the waiver. PEM, Item 402, p. 2.

Continuous period of care - A period of at least 30 consecutive days where the institutionalized spouse/applicant has been, or is expected to be:

- . in a hospital, and/or
- . in an LTC facility, and/or
- . approved for the waiver as defined in PEM 106.

The period is no longer continuous when none of the above are true for 30 or more consecutive days. PEM, Item 402, p. 2.

COUNTABLE ASSETS

MA Only

Determine countable assets based on SSI-related MA policy in PEM 400. When using PEM 400, the couple is considered an asset group. PEM, Item 402, p. 3.

CLIENT'S ASSET ELIGIBILITY

Initial Eligibility

SSI-Related MA Only

Apply the following formula to:

- . each past month, including retro MA months, and the processing month for applicants, and
- . the first future month for MA recipients

Exception: Do **not** do initial eligibility when the “**SPECIAL EXCEPTION POLICY**” above applies.

Begin the client’s “Presumed Asset Eligible Period” (below). PEM, Item 402, p. 3.

Initial Eligibility Formula

SSI-Related MA

The formula for asset eligibility is:

- . The value of the couple's (his, her, their) countable assets for the month being tested
- . MINUS the "protected spousal amount" (see below)
- . **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in PEM 400 for the category(ies) being tested. PEM, Item 402, p. 3.

Exception: The client is asset eligible when his countable assets exceed the asset limit if denying MA would cause undue hardship. See "**UNDUE HARDSHIP.**" Assume that denying MA will **not** cause undue hardship unless there is evidence to the contrary. PEM, Item 402, p. 3.

Presumed Asset Eligible Period

SSI-Related MA Only

Applicants eligible for the **processing month** and recipients eligible for the first future month are automatically asset eligible for up to 12 calendar months regardless of:

- . changes in their community spouse's assets, or
- . the number of MA applications or eligibility determinations that occur during the period.

The 12-month period begins with the month following the processing month and is called the presumed asset eligible period.

Exception: The 12-month period ends sooner if:

- . the continuous period of care ends, or
- . the client's spouse no longer meets the definition of a community spouse, or
- . the client's spouse dies or the couple divorces.
- .

Note: Do **not** extend the original 12-month period when the client becomes eligible for additional MA benefits (e.g., QMB benefits were effective 8-1-91; Group 2 coverage began 10-1-91). PEM, Item 402, p. 4.

Presumed Asset Eligible Period Ends

SSI-Related MA Only

When the presumed asset eligible period ends, use PEM 400 to determine the client's asset eligibility. Count only the client's assets, **not** the spouse's assets.

Note: Because only the client's assets are counted after the presumed asset eligible period, the client may have to transfer some assets to his spouse to make sure that he owns no more than the asset limit for one person at the end of the presumed asset eligible period. See "**ASSET TRANSFER INFORMATION.**" PEM, Item 402, p. 4.

ASSET TRANSFER INFORMATION

SSI-Related MA Only

The presumed asset eligible period allows time for the client to transfer assets to his community spouse. The client is **not** required to transfer assets to his spouse. However, if he fails to do so, he may be ineligible for MA after the presumed asset eligible period.

When the rules in this item no longer apply, PEM 400 is used to determine continuing asset eligibility. The community spouse is **not** an asset group member. The protected spousal amount is **not** used. Therefore, the client's own countable assets must **not** exceed the appropriate asset limit (e.g., \$2000 for AD-Care category, \$4000 for QMB). PEM, Item 402, pp. 4-5.

Community Spouse Resource Allowance

SSI-Related MA Only

Federal law requires that the client and community spouse be told how much the "community spouse resource allowance" is and how it was calculated. Do this only when an applicant is MA eligible for the processing month or a recipient's eligibility continues.

Exception: Do **not** compute the allowance, notify the client or community spouse of the allowance or send the asset transfer notice when the “**SPECIAL EXCEPTION POLICY**” above applies.

The allowance is:

- . the "PROTECTED SPOUSAL AMOUNT" (see below)
- . **MINUS** the value of the community spouse's current countable assets

Note: Do **not** count cash value assets owned jointly by the client and community spouse in this calculation.

- . **EQUALS** the community spouse resource allowance.

However, the value of assets fluctuates constantly. Therefore, what the couple really needs to know is: when the rules in PEM 402 no longer apply, the client's countable assets must **not** exceed the appropriate asset limit (e.g., \$2000 for the AD-Care category). All of the above information is in the Asset Transfer Notice. PEM, Item 402, p. 5.

INITIAL ASSET ASSESSMENT

MA Only

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse.

An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989. PEM, Item 402, pp. 5-6.

The federal law requires that an initial asset assessment be done when requested by either spouse **even when an MA application is NOT made**. PEM, Item 402, p. 6.

Notification

MA Only

Notify both spouses in writing of the results of the initial asset assessment whether it is done prior to, or at the time of, an MA application. PEM, Item 402, p. 6.

Standard of Promptness

MA Only

Complete an initial asset assessment and mail notices within 45 days. The period begins on the date the local office receives the signed DHS-4574-B.

A person who requests an initial asset assessment, without applying for MA, must be given the same assistance in completing the assessment and obtaining verification that would be provided to any client. See PAM 130 for types of verification, sources and timeliness standards. An initial asset assessment **cannot** be completed if a client or his spouse refuses to provide a verification or has **not** made a reasonable effort to obtain it within the time standards in PAM 130. PEM, Item 402, p. 7.

PROTECTED SPOUSAL AMOUNT

MA Only

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the **greatest** of the amounts in 1-4 below.

1. \$20,880 effective January 1, 2008 and \$20, 376 effective April 1, 2007.
2. One-half the initial asset assessment amount (see "**INITIAL ASSET ASSESSMENT**"), but **not** more than \$104,400 effective January 1, 2008 and \$101,880 effective April 1, 2007.
3. The amount determined in a hearing per PAM 600.
4. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:

- .. pay support to the community spouse, and
- ..
- .. transfer assets to the community spouse for the support of the community spouse or a family member. Family member is defined under "FAMILY ALLOWANCE" in PEM 546. PEM, Item 402, pp. 7 and 8.

In the instant case, the facts are not at issue. Bank statements indicated that claimant and his spouse had [REDACTED] in the [REDACTED] account for the months of August and September 2008. (Exhibit 22) Claimant conceded that he and his wife saved the money up to pay for their mortgage when his wife gets laid off for six months and that they did retain the monies in the account. The department's determination of excess assets must be upheld under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant's listed assets may be counted on as accurate and it was determined that claimant had in excess of \$4,000.00 in assets. The department properly denied claimant's application for Medical Assistance benefits under the circumstances and determined that claimant had in excess of \$4,000.00 in countable available assets.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 9, 2009

Date Mailed: July 13, 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 receipt date of the rehearing decision.

LYL/vmc

cc:

