

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: 2009-5883

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 23, 2009

Monroe 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 Thursday July 23, 2009. The claimant was not present, but was represented by her guardian, [REDACTED], and attorney [REDACTED].

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) The claimant entered long-term care in May 2008.

(2) On August 18, 2008, an MA application with retroactive benefits to May 2008 was filed on behalf of the claimant who was in long-term care, by her daughter.

(3) The claimant had assets in a trust called the [REDACTED] that was created on February 12, 2001. (Department Exhibit 1-17)

(4) On September 30, 2008, the Medicaid Policy Unit determined that this was a Medicaid trust as defined in PEM 401, p. 4, where Article II of the trust agreement stated that the trust can be amended or revoked. Article IV also states: Trustees shall pay all of the net income to or for my benefit, together with such amounts of trust principal as I may withdraw from time to time.” The countable assets for the claimant are the value of all the countable net income and the countable assets in the principal of the trust per PEM 401, p. 8, Revocable Trust. The trustee will have to provide you a record of all the items and their value that are contained in the [REDACTED]. Count any payments made by the trust to the claimant or her legal representative as her unearned income per PEM 401, p. 9. If the homestead has been transferred to the trust, it is no longer exempt and must be counted as an asset of the trust. Should the property be conveyed out of the trust back to the claimant/community spouse, it would be exempt property effective the month it was transferred, if the property meets the homestead criteria listed in PEM 400, pp. 17-19.

(5) On October 2, 2008, the department caseworker calculated the claimant’s eligibility for MA with the claimant’s countable assets from a savings account of [REDACTED] and a savings account of [REDACTED] for a grand total of [REDACTED] (Department Exhibit 18-19), which exceeded the MA limit of \$2,000 and the Medical Spending Program (MSP) of \$4,000. (Department Exhibit 20-23)

(6) On October 2, 2008, the department caseworker sent the claimant a notice that she did not qualify for MA and the MSP because of excess assets. (Department Exhibit 24-25)

(7) On October 29, 2008, the department received a hearing request from the claimant, contesting the department's action.

(8) During the hearing, the claimant's attorney stated that after a review of the documents that the trust was a quasi personal care contract as found on pages 4-7 of the Department Exhibits of the trust agreement.

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 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.

Trust Definitions

FIP, SDA and AMP Only

Beneficiary - the person for whose benefit a trust is created.

Grantor or settlor - the person who established the trust. It includes anyone who furnishes real or personal property for the creation of the trust.

Principal (or corpus) - the assets in the trust. The assets may be real property (example: house, land) or personal property (example: stocks, bonds, life insurance policies, saving accounts).

Trustee - the person who has legal title to the assets and income of a trust and the duty to manage the trust for the benefit of the beneficiary. PEM, Item 400, p. 15.

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.

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.

TRUSTS - MA

DEPARTMENT POLICY

MA Only

This item contains Medicaid policy for trusts. The item is divided into three parts:

- . Medicaid trusts
- . Medicaid Qualifying Trusts (MQTs)
- . Other trusts

Which policy applies depends on the terms of the trust and when the trust was established.

Use policy in PEM 400 and PAM 805 for prepaid funeral contracts and life insurance funded funerals. PEM, Item 401, p. 1.

GENERAL DEFINITIONS

MA Only

These definitions apply to all trust policy. There are special definitions for Medicaid trusts. PEM, Item 401, p. 1.

Beneficiary - the person for whose benefit a trust is created.

Grantor or settlor - the person who established the trust. Any person who contributes to a trust is considered a grantor.

Principal or corpus - the assets in the trust. The assets may be real property (e.g., house, land) or personal property (e.g., stocks, bonds, life insurance policies, savings accounts).

Trust - a right of property created by one person for the benefit of himself or another. It includes any legal instrument or device that exhibits the general characteristics of a trust but is not called a trust or does not qualify as a trust under state law. Examples of such devices might be annuities, escrow accounts, pension funds and investment accounts managed by someone with fiduciary obligations.

Trustee - the person who has legal title to the assets and income of a trust and the duty to manage the trust for the benefit of the beneficiary.

PEM, Item 401, p. 1.

EVALUATING TRUSTS

Determine if a trust established on or after August 11, 1993, is a Medicaid trust using:

- . **“MEDICAID TRUST DEFINITIONS”** and
- . **“MEDICAID TRUST CRITERIA”** and

Use the following policies if the trust is a Medicaid trust:

- . **"COUNTABLE ASSETS FROM MEDICAID TRUSTS"**
- . **"COUNTABLE INCOME FROM MEDICAID TRUSTS"**
- . **"TRANSFERS FOR LESS THAN FMV"**

Determine if a trust established before August 11, 1993, is a **"MEDICAID QUALIFYING TRUST"** (MQT). Use the following policies if the trust is an MQT.

- . "Countable MQT Assets"
- . "Countable MQT Income"

Use **"OTHER TRUST"** policy when a trust is not:

- . an MQT, or
- . a Medicaid trust. PEM, Item 401, p. 3.

MEDICAID TRUST DEFINITIONS

Use the **"GENERAL DEFINITIONS"** and these definitions when determining:

- . whether a trust is a Medicaid trust, and
- . what is available from and transferred for a Medicaid trust.

Irrevocable Trust - a trust that is not a revocable trust. See revocable trust below.

Resources - all income and assets of a person and the person's spouse. It includes any income and assets the person or spouse is entitled to but does not receive because of any action:

- . by the person or spouse; or
- . by someone else (including a court administrative body) with legal authority to act in place of or on behalf of the person or spouse; or
- . by someone else (including a court or administrative body) acting at the direction or upon the request of the person or spouse.

Revocable trust - a trust which can be revoked or modified by:

- . the grantor
- . a court
- . the trustee
- . any other person or entity.

This includes a trust which allows for revocation or modification only when a change occurs such as the grantor leaves the LTC facility or the beneficiary becomes competent.

Modify means changing the beneficiaries or the availability of principal or income.

Annuity - A written contract, usually with a commercial insurance company, establishing a right to receive specified, periodic payments for life or for a term of years. They are usually designed to be a source of retirement income. Only certain types of annuities are excluded as resources. PEM, Item 401, pp. 3-4.

Home Caretaker & Personal Care Contracts

A contract/agreement that pays prospectively for expenses such as repairs, maintenance, property taxes, homeowner's insurance, heat and utilities for real property/homestead or that provides for monitoring health care, securing hospitalization, medical treatment, visitation, entertainment, travel and/or transportation, financial management or shopping, etc, would be considered a

divestment. Consider all payments for care and services which the client made during the “look back” period as divestment.

Note: The preceding are examples and should not be considered an all inclusive or exhaustive list.

Relatives who provide assistance or services are presumed to do so for love and affection, and compensation for past assistance or services shall create a rebuttable presumption of a transfer for less than fair market value. A relative is anyone related to the client by blood, marriage or adoption.

Such contracts/agreements shall be considered a transfer for less than fair market value unless the compensation is in accordance with all of the following:

- . The services must be performed **after** a written legal contract/agreement has been executed between the client and provider. The services are not paid for until the services have been provided. The contract/agreement must be dated and the signatures must be notarized **and**
- . At the time of the receipt of the services, the client is not residing in a nursing facility, adult foster care home, institution for mental diseases, inpatient hospital, intermediate care facility for mentally retarded or eligible for home and community based waiver, home health or home help. At the time services are received, the services must have been recommended in writing and signed by the client’s physician as necessary to prevent the transfer of the client to a residential care or nursing facility. Such services cannot include the provision of companionship **and**
- . DHS will verify the contract/agreement by reviewing the written instrument between the client and the provider which must show the type, frequency and duration of such services being provided to the client and the amount of consideration (money or property) being received by the provider, **or** in accordance with a service plan approved by DHS. If the amount paid for services is above fair market value, then the client will be considered to have transferred the asset for less than fair market value. If in question, fair market value of the services may be determined by consultation with an area business which provides such services, **and**

- . The contract/agreement must be signed by the client or legally authorized representative, such as an agent under a power of attorney, guardian, or conservator. If the agreement is signed by a representative, that representative cannot be the provider or beneficiary of the contract/agreement.

Assets transferred in exchange for a contract/agreement for personal services/assistance or expenses of real property/homestead provided by another person after the date of application are considered available and countable assets. PEM, Item 405, pp. 5-6.

A preponderance of the evidence on the record establishes that the claimant had countable available assets in excess of \$2,000 on the date of her application. The MA asset limit for a person in the claimant's circumstances is \$2,000 and MSP asset limit is \$4,000. The claimant put her homestead and other assets in a revocable trust that was created on February 12, 2001. As a result, all the assets of the trust must be counted. The claimant's trust is revocable because Article II, Reservations, states "I reserve the right to alter, amend, revoke, or terminate the agreement in whole or in part ..."

Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's MA application due to excess assets. In addition, the claimant's homestead was part of the trust that was deemed revocable. According to department policy, the homestead can be returned and will no longer be counted as an asset in the month that the homestead was returned.

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 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: October 2, 2009

Date Mailed: October 2, 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.

CGF/vmc

cc:

A large black rectangular redaction box covering several lines of text in the distribution list.