

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 20091207
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 19, 2009
Emmet County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on August 19, 2009. Claimant did not appear; however, she was represented by [REDACTED], Attorney.

ISSUE

Did the department properly refuse to exempt claimant's full mausoleum burial space value when determining her continued long-term care Medicaid (MA) asset eligibility in September 2008?

FINDINGS OF FACT

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

1. At all times relevant, claimant is (and remains) a long-term care resident.
2. On June 1, 2008, the department opened a long-term care MA case for claimant because they determined she met all of the criteria necessary for application approval, including asset eligibility.
3. The department determined claimant was under the MA asset limit because her authorized representative spent [REDACTED] of claimant's money to purchase a family mausoleum by cashier's check dated [REDACTED] (Department Exhibit 1, pg. 5).

4. At that time, the department's policy provided for asset exclusions under certain conditions when determining an applicant's MA asset eligibility.
5. The DHS local office decided to exclude the aforementioned money because they believed it qualified for same under their existing policy; consequently, claimant's remaining assets did not exceed the maximum amount necessary to qualify for long-term care MA (See also Finding of Fact #2 above).
6. After claimant's long-term care MA case was opened, the DHS local office sought clarification from the department's Medicaid Policy Unit regarding the propriety of applying the family mausoleum exclusion in claimant's case.
7. On August 29, 2008, the DHS local office received an e-mail from the department's Medicaid Policy Unit which instructed them to exclude only the equity value of one space in the family mausoleum and to consider the rest as a countable, liquid cash asset for MA eligibility determination purposes (Department Exhibit 1, pg. 1).
8. Since claimant's family mausoleum contained six casket spaces, the DHS local office divided her purchase price by six, then excluded only that amount and determined the remainder exceeded the MA asset qualifying limit.
9. Specifically, on September 10, 2008, the DHS local office mailed a negative action notice to claimant's authorized representative which states in relevant part:

After further clarification from DCH and policy, the [REDACTED] Casket Company burial space can only be counted for one. The item you purchased holds six caskets. The value of one space in this would be [REDACTED] so the remainder [REDACTED] is considered an asset. Case will close (Department Exhibit 1, pg. 13).
10. Claimant's long-term care MA case did, in fact, close on September 22, 2008; consequently, her attorney filed a hearing request to dispute the issue.
11. Claimant's hearing was held by conference telephone on August 19, 2009.

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).

A mausoleum is an above-ground building exclusively used for the entombment of several bodies and is commonly referred to as a family burial plot. Under the department's policy this type of building, in combination with all necessary improvements like the inside vaults, the storage caskets within those vaults and any identifying plaques on the building itself, is considered to be a single "burial space." Additionally, the department's policy establishes the value of this type of burial space to equal its equity value, which is [REDACTED] in claimant's case. BEM Item 400, pg. 28.

The following policy specifically instructs the department on when to exclude a mausoleum burial space for MA asset eligibility determination purposes. This policy states:

SSI-Related MA and AMP Burial Space Exclusion

Exclude one burial space **held for** (see below) each of the following:

- Each qualified fiscal group member.
- Whether by blood, adoption or marriage, the member's:
 - Parents, and
 - Minor and adult children, and
 - Siblings
- The spouse of each person listed above.

For a member's relatives only by marriage, apply the exclusion only if the marriage has **not** ended by death or divorce. BEM Item 400, pgs. 28 and 29 (see also Client Exhibit A, pgs. 6 and 7).

Nowhere does the above-referenced policy state that one portion of a properly-purchased mausoleum burial space is exempt while another portion is not. Furthermore, the department's witness testified credibly at hearing that prior to this case, the prices long-term care MA applicants paid for any mausoleum of any size were deemed exempt assets as long as the required familial relationship existed within the burial group designees. Since the department failed to present any documentary evidence or testimony to support a finding to the contrary, this Administrative Law Judge must rule that claimant's designated mausoleum occupants met the above-referenced criteria when her application was initially approved in June 2008. Consequently, no basis exists

for the exemption to be withdrawn. Claimant's case closure simply was erroneous and it cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in refusing to exempt claimant's full mausoleum burial space value when determining her continued long-term care MA asset eligibility in September 2008.

Accordingly, the department's action is REVERSED and this case is returned to the local office for long-term care MA benefit reinstatement with Patient Pay Amounts recalculated from the date of erroneous closure forward. **SO ORDERED.**

/s/ _____
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 2, 2010

Date Mailed: December 3, 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.

MBM / vc

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