

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: 2009-1305
Issue No: 2011
Case No. [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 11, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Tyra L. Wright

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 May 11, 2009. The Claimant, [REDACTED], is deceased. Claimant's daughter was his agent under a power of attorney agreement. Claimant's attorney, [REDACTED], appeared at this hearing. An adult eligibility specialist and a family independence manager represented the Department.

ISSUE

Did the Department properly determine the Claimant was eligible for Medical Assistance (MA) benefits starting March 2008?

FINDINGS OF FACT

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

- (1) Claimant and his wife applied for MA benefits on February 4, 2008.

- (2) Claimant possessed four life insurance policies with [REDACTED]. The Department counted these policies as assets.
- (3) One of the policies was surrendered for cash on February 25, 2008 and the other three policies were surrendered on February 26, 2008. The checks, which totaled more than \$2,700, were made in Claimant's name, [REDACTED].
- (4) Claimant's daughter, under the power of attorney, cashed the checks on March 3, 2008.
- (5) The Department determined that Claimant was eligible for MA benefits effective March 1, 2008.
- (6) Claimant's attorney contends that the Department should have found the Claimant eligible for benefits February 2008 and retroactive to January 2008 because the insurance policies were not assets after being assigned to Claimant's grandson, [REDACTED] on January 24, 2008.
- (7) The Department received Claimant's hearing request on July 1, 2008.

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies for FAP and MA are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

**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.

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.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date.

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients will be penalized for divestment (see [PEM 405](#)). (PEM 400, p. 4)

DEPARTMENT POLICY

MA ONLY

Divestment results in a penalty period in MA, **not** ineligibility. Divestment policy does **not** apply to Qualified Working Individuals (PEM 169).

Divestment is a type of transfer of a resource and not an amount of resources transferred.

Divestment means a transfer of a resource (see [“RESOURCE DEFINED”](#) below) by a client or his spouse that:

- Is within a specified time (see [“LOOK-BACK PERIOD”](#) below), and
- Is a transfer for [“LESS THAN FAIR MARKET VALUE”](#), and

Note: See [“Annuity Not Actuarially Sound”](#) and [“Joint Owners and Transfers”](#) below and PEM 401 about special transactions considered transfers for less than fair market value.

- Is **not** listed below under [“TRANSFERS THAT ARE NOT DIVESTMENT.”](#)

During the penalty period, MA will **not** pay the client's cost for:

- LTC services, or
- Home and community-based services, or
- Home Help, or
- Home Health.

MA will pay for other MA-covered services.

Do **not** apply a divestment penalty period when it creates an undue hardship. See “**UNDUE HARDSHIP**” below.

LOA 2 does **not** support this policy. You must manually compute the divestment penalty period and notify the client.

RESOURCE DEFINED Resource means all the client’s and his spouse’s assets and income. It includes all assets and all income, even countable and/or excluded assets, the individual or spouse receive. It also includes all assets and income that the individual (or their spouse) were entitled to but did **not** receive because of action by one of the following:

- The client or spouse.
- A person (including a court or administrative body) with legal authority to act in place of or on behalf of the client or his spouse.
- Any person (including a court or administrative body) acting at the direction or upon the request of the client or his spouse.

TRANSFER OF A RESOURCE

Transferring a resource means giving up all or partial ownership in (or rights to) a resource. **Not** all transfers are divestment. Examples of transfers include:

- Selling an asset for fair market value (not divestment).
- Giving an asset away (divestment).
- Refusing an inheritance (divestment).
- Payments from a “**MEDICAID TRUST**” that are **not** to, or for the benefit of, the person or his spouse. See **PEM 401** (divestment).
- Putting assets or income in a trust. See **PEM 401**.
- Giving up the **right** to receive income such as having pension payments made to someone else (divestment).
- Giving away a lump sum or accumulated benefit (divestment).
- Buying an annuity that is **not** actuarially sound (divestment).
- Giving away a vehicle (divestment).
- Putting assets or income in an LLC (Limited Liability Company) (PEM 405 p. 1-2)

In this case, Claimant received the checks, made payable to [REDACTED], as payment for the surrendered insurance policies. Based on the information available to the Department and the fact that the checks were made payable to the Claimant, it is found that the Department did not improperly delay Claimant’s eligibility for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not improperly delay Claimant's eligibility for MA benefits.

Accordingly, the Department's determination is AFFIRMED.

/s/ _____
Tyra L. Wright
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/13/09

Date Mailed: 05/14/09

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.

TW/dj

cc:

