

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: 2009-16713

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 3, 2009

St. Joseph 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 Tuesday, November 3, 2009. The claimant is deceased, but was represented by his 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) On December 22, 2008, the claimant applied for MA for long-term care.

(Department Exhibit 1-5)

(2) On January 29, 2009, the department's caseworker calculated the claimant's eligibility for MA benefits (Department Exhibit 6-9):

- The claimant receives [REDACTED] in Social Security Administration Retirement, Survivor's and Disability Insurance (RSDI). (Department Exhibit 11)
- The claimant had a trust fund at his nursing home and had an ending balance of [REDACTED]
- The claimant had a savings account with a balance of [REDACTED]
- The claimant had a checking account with a low monthly balance of [REDACTED]

(3) The claimant had total accountable assets in the amount of [REDACTED], which would make him ineligible for MA.

(4) On January 29, 2009, the department caseworker sent the claimant a notice that he did not qualify for MA because of excess assets because his assets were more than the \$2,000 asset limit. In addition, the claimant did not qualify for the Medicare Savings Program (MSP) because his asset limit was more than the \$4,000 asset limit. (Department Exhibit 46, 47)

(5) On February 9, 2009, the department received a hearing request from the claimant's attorney, contesting the department's negative action.

(6) During the hearing, the claimant's attorney stated that the claimant's wife had initially removed him from the accounts, but had subsequently put him back on the accounts in error because her memory was failing and that she felt that the claimant should be on her bank accounts since he was her husband.

(7) During the hearing, the attorney agreed with the amount calculated by the department of the contested amounts, but not that the money in the accounts was the claimant's.

(8) During the hearing, the department determined that the claimant was eligible for MA for the month of February 2009, which would result in the contested time period being for November 2008 until January 2009.

(9) During the hearing, a determination was made that the claimant died [REDACTED]

(10) During the hearing, the claimant's attorney stated that the assets in the accounts were from the redetermination of the community spouse assets. In addition, the claimant's wife was removed as the claimant's guardian in July 2009 where the claimant's daughter was appointed on August 4, 2009.

(11) During the hearing, the department manager stated that the claimant's MA was redetermined in November 2007. The claimant's case was closed October 31, 2008 because the redetermination papers were not submitted. A new application was submitted on December 22, 2008, which would require the department to review all the assets.

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 manuals provide the following relevant 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.

Assets must be considered in determining eligibility for Medical Assistance. The department has considered cash, investments, retirement plans, and trusts. Assets mean cash, any other personal property, and real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability test and is not excluded. PEM, Item 400. In

the instant case, there was no argument as to how much money was in the contested accounts, but what was contested was who the money in the accounts belonged to.

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 his application. The MA asset limit for a person in the claimant's circumstances is \$2,000. The claimant's attorney stated that the money in the accounts was not the claimant's. Since ownership of the money in the accounts is being contested, the department is required to make a reconsideration of the claimant's application to determine who the money in the accounts actually belongs to per policy.

The claimant's wife served as his guardian, but was removed in July 2009 because she had a difficult time keeping track of the requirement of being the claimant's guardian. The claimant's daughter was appointed guardian on August 4, 2009. The claimant's redetermination packet that was due October 31, 2008 was not submitted by the due date, which resulted in the claimant's case being closed. The new application that was submitted on December 22, 2008, would require that all assets be reviewed.

The ownership of the assets in question is the monies in the checking and savings accounts that have the claimant's name on them.

**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 [BEM 106](#)) and his spouse jointly own the asset:

- Consider the client the sole owner in determining the community spouse resource allowance (CSRA). [BEM 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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 application should be denied based upon the fact that the claimant possessed excess assets.

According, the department's decision is **REVERSED**. The department is ordered to determine eligibility for the contested time period of November 2008 and January 2009 by doing a breakdown to redetermine eligibility based on ownership of the contested assets.

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

Date Signed: December 17, 2009

Date Mailed: December 17, 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:

