

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: 2009-20097
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 22, 2009
Lapeer 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, September 22, 2009. The claimant personally appeared and testified on her own behalf with her husband [REDACTED] as a witness.

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 January 29, 2009, the claimant applied for Medical Assistance benefits.

(2) During the verification process, the department caseworker determined that the claimant had a 401K account through [REDACTED], and the employee profit sharing plan where the value of the plan as of December 31, 2008 was [REDACTED]. (Department Exhibit 4-5)

(3) Subsequently, the claimant indicated to the department caseworker that they were unable to access this account where the department caseworker stated that if they could prove that they cannot access the account that their eligibility for MA would be verified. The department caseworker did not receive written verification that the claimant did not have access to this account.

(4) On February 19, 2009, the department caseworker calculated the claimant's eligibility for MA benefits with other cash assets of [REDACTED], where the claimant exceeded the asset limit for MA of \$3,000. (Department Exhibit 2-3)

(5) On February 19, 2009, the department caseworker sent the claimant a denial notice that her January 29, 2009 MA application was denied because her countable assets were more than the \$3,000 asset limit.

(6) On March 12, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(7) During the hearing, the claimant testified that written verification could not be obtained from the fund or the employer even though it was requested because of an informal unwritten rule of no access for 90 days after work separation.

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 statement 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.

A preponderance of the evidence in the record establishes that the claimant had countable available assets in excess of \$3,000 on the date of her application. The Medical Assistance asset limit for a person with the claimant's circumstances is \$3,000. The claimant had a 401K in the amount of [REDACTED]. Even though the claimant stated that it was an informal, unwritten rule of no access for 90 days after work separation, the claimant did not provide written verification of no access as is required by policy by the department.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, concludes that the department correctly denied the claimant's MA application due to excess assets. 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 the claimant's application for MA benefits should be denied based upon the fact that the claimant had excess assets.

According, the department's decision is **AFFIRMED**.

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

Date Signed: October 27, 2009

Date Mailed: October 27, 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.

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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:

