

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 October 28, 2009. The claimant was not present, but was represented by her son, [REDACTED]. This hearing was originally held with Administrative Law Judge [REDACTED], who has left the employment of the State Office of Administrative Hearings and Rules. This Administrative Law Judge has reviewed the spoken and written record in its entirety and issues this decision in her stead.

ISSUE

Did the department properly determine the claimant was excess assets to receive Medicaid in the months of January and February, 2009?

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 applied for Medicaid and retro Medicaid.
2. On February 18, 2009, the department issued the claimant a Verification Checklist (DHS-3503) requiring deeds to the homestead. (Department Exhibit 15 – 16)
3. On February 27, 2009, the claimant was mailed a second Verification Checklist (DHS-3503) that indicated the claimant would have to remove

the homestead from the trust in order to exclude it as an asset and that the months the home is in the trust, [REDACTED] would be over the asset limit for MA. (Department Exhibit 17 – 18)

4. On March 9, 2009, the department received a letter from [REDACTED] that indicated they were still in the process of removing the homestead from the trust. (Department Exhibit 19)
5. On March 18, 2009, the department received a copy of the quitclaim deed, removing the homestead from the trust and granting it back to [REDACTED] as individuals. (Department Exhibit 21 - 22)
6. On March 5, 2009, the Medicaid Policy Unit issued a memorandum that indicated the homestead is a countable asset if it is in the trust, but if conveyed out of the trust and back to the customer/community spouse, it would be exempt property effective the month it was transferred. (Department Exhibit 23)
7. On March 20, 2009, the department issued two Excess Asset Notices (DHS-417) that denied the claimant's Medicaid for January and February, 2009 due to excess assets. (Department Exhibit 1 – 2)
8. [REDACTED] submitted a hearing request on claimant's behalf on April 3, 2009, disputing the denial of Medicaid for January and February, 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy states:

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" BEM, 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. BEM, Item 400, p. 3.

Use the special asset rules in BEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and BEM 106 for the definition of waiver patient.

HOMES AND REAL PROPERTY EXCLUSIONS

Homestead Definition and Exclusion

SSI-Related MA Only

A homestead is where a person lives (unless "**Absent from Homestead**") that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude the asset group's homestead. BEM, Item 400, p. 18.

Asset eligibility is a condition of SSI-related Medicaid eligibility. BEM 400. Department policy indicates that a homestead will be excluded as an asset in most circumstances. BEM 400. However, if the homestead is in a Medicaid Trust, the homestead becomes a countable asset. BEM 401. The homestead does not become exempt property until the month it is conveyed back to the claimant/spouse (provided that it meets all criteria in BEM 400).

In this case, the homestead was not transferred out of the trust until March 18, 2009. Thus, the homestead was considered an asset until March, 2009. This made the claimant excess assets to be eligible for Medicaid for January and February, 2009.

