

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: 2009-22742

Issue No: 2021/2010

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2010

Bay County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon request for a hearing. After due notice, telephone hearing was held on April 29, 2010. Claimant was represented by [REDACTED].

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance (MA)?

FINDINGS OF FACT

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

(1) During January through April 2009, claimant was a recipient of MA. She resided in a Long Term Care (LTC) facility.

(2) On or about November 2008, claimant's homestead was condemned and the home thereon was removed. Claimant's vacant lot was subsequently assessed to have

a State Equalized Value (SEV) of [REDACTED]. Department A, page 33. The property no longer qualified for exempt asset status as a homestead. Countable value for MA purposes was twice the SEV: \$ [REDACTED]. Bridges Eligibility Manual (BEM) 400.

(3) January 9, 2009, a qualified realtor opined that the value of the lot was [REDACTED]. Department A, pages 16-17.

(4) March 2009, claimant sold the lot for [REDACTED] Department A, page 22.

(5) March 31, 2009, the department determined that claimant had divested [REDACTED] by selling the property for less than its fair market value (lot value [REDACTED] less sale for \$ [REDACTED]). The divestment penalty was no payment for LTC for 20 days (divested amount of [REDACTED] X cost of one month long term care of [REDACTED] month of disqualification X 30 days = 20 days ineligibility). Department A, page 22.

(6) April 14, 2009, the department provided written notice to the claimant that the disqualification was implemented. Department A, page 31.

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).

Department manuals provide the following policy statements and instructions for caseworkers:

Countable assets cannot exceed the applicable asset limit. 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. The asset limit for SSI-related MA, asset group of 1 is \$2000.

Not all assets are counted.

You must consider the following to determine whether, and how much of, an asset is countable:

- An asset is countable if it meets the availability tests and is not excluded.
- 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.
- Assume an asset is available unless evidence shows it is not available.

Exclude the asset group's homestead.

Program Eligibility Manual (PEM) 400

P.A. 280 of 1939, as amended

Social Security Act, Sections 1902(a)(10); (r)(2)

Deficit Reduction Act of 2005

42 CFR 435.840 - .845

MCL 400.106

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

Divestment means a transfer of a resource by a client or his spouse that:

- Is within a specified time, and
- Is a transfer for “less than fair market value”, and

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

- LTC services.
- Home and community-based services.

- Home Help.
- Home Health.

MA will pay for other MA-covered services.

The penalty period is computed on the total “Uncompensated Value” of all resources divested.

Determine the “Uncompensated Value” for each resource transferred and combine into a total “Uncompensated Value”.

Divide the total “Uncompensated Value” by the average monthly private LTC Cost in Michigan for the client’s “Baseline Date.” This gives the number of full months for the penalty period. Multiply the fraction remaining by 30 to determine the number of days for the penalty period in the remaining partial month.

Apply the total penalty months and days.

BEM 405; Social Security Act, Sections 1902(a)(18), 191

After careful examination of the record and department policy, the Administrative Law Judge finds that the department properly determined that claimant divested of property and properly determined the divestment penalty. At hearing, claimant asserted that it was her belief that the property was not worth what the realtor said it was and that he did not look at the property after the dwelling was removed. No objective proof was provided to the department or at hearing to establish that the value of the property was less than [REDACTED] as the realtor stated and the realtor’s valuation clearly states that it was a “lot” that was being valued. Finding of Fact 1-6. Accordingly, the department has met its burden of proof and its action must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance.

Accordingly, the department's action is **HEREBY UPHELD**.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 20, 2010

Date Mailed: August 26, 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 receipt 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.

JAB/db

cc:

