

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: 2009-26096
Issue No: 2020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted on July 29, 2009. The Claimant appeared and testified. Joyce Decker, FIM and Kathleen Dyke, FIS, appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the Claimant's Medical Assistance ("MA") effective 6/9/09.

FINDINGS OF FACT

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

1. Claimant and his family were MA recipients.
2. During an annual review, Claimant reported receiving income from his retirement savings.

3. The Department, without documentation, determined that Claimant had over \$100,000 in the retirement account.
4. The retirement money was added to the MA Budget and benefits were denied as Claimant was over asset. (Exhibit 1, pp. 16-18).
5. Claimant requested a hearing contesting the department's determination regarding MA benefits on June 16, 2009.
6. At the hearing, the record was left open to allow Claimant additional time to produce information regarding how much money Claimant is allowed to withdraw from his retirement plan.
7. Claimant provided additional information regarding a life insurance policy but nothing regarding the retirement account.

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, formally known as the Family Independence Agency, 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 goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. PEM 105, p. 1. Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for SSI recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI

program thus are categorized as either FIP related or SSI related. *Id.* To receive MA under an SSI related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive MA under FIP related categories. *Id.*

Assets must be considered in determining MA eligibility. PEM 400, p. 1. Assets are cash and any other personal and/or real property. *Id.* Countable assets must be available and cannot exceed the applicable asset limit. PEM 400, pp. 1, 6. Available means that someone in the asset group has the legal right to use or dispose of the asset. PEM 400, p. 6. The SSI related asset limit is \$2,000 for a group of one and \$3,000 for a group of two. PEM 400, p. 5. Lump sums and accumulated benefits are income in the month received. PEM 400, p. 10.

A life insurance policy is considered an asset if it can generate a cash surrender value (CSV). Generally, whole life insurance policies generate a CSV while term policies do not. A policy that generates a CSV is the policy owner's asset. PEM 400, p. 25. Life insurance policies can be excluded as an asset if the cash surrender value of all the total face values of all policies a policy owner has for the same insured, total \$1,500 or less. PEM 400, p. 25.

A retirement plan value is considered an asset based on the amount of money the person can currently withdraw from the plan. Any early withdrawal penalty can be deducted, but not the amount of taxes due. Funds in a plan are not available if the person must quit his job to withdraw any month. PEM 400, p. 15.

In the present case, Claimant produced evidence of a life insurance policy with a CSV value of \$0.00. Therefore, this is not counted as an asset under PEM 400. Claimant testified, however, that he is withdrawing money from a retirement account of \$782.00/month. Claimant

is not withdrawing from the life insurance policy as it has no cash value. Claimant insists that there is a limit that he can withdraw per year from the retirement, but no documentation regarding same has been provided. Claimant indicates that he withdrew \$782.00/month from the retirement account for the past 3 years, but he is no longer able to do so. The Administrative Law Judge finds, based on the evidence produced by Claimant, that the life insurance policy provided would not have provided any monthly payments as the plan has no cash value. Therefore, it is determined that Claimant has another retirement account. The undersigned also finds that since \$782.00/month can be withdrawn from that retirement account, additional money could be withdrawn as well – albeit probably with penalty. Therefore, Claimant’s retirement funds are available and, under PEM 400, were properly counted in Claimant’s MA budget.

Accordingly, the Department’s decision is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department acted in accordance with department policy when it denied Claimant MA benefits for excess assets on 6/9/09.

Accordingly, it is ordered:

1. The Department’s determination is AFFIRMED

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/28/09

Date Mailed: 09/01/09

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.

JV/dj

cc:

