

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

IN THE MATTER OF:



Reg No. 200926590
Issue No. 2021
Case No. [REDACTED]
Hearing Date: February 2, 2010
Lake County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on February 2, 2010. Claimant was represented by [REDACTED]

ISSUE

Did the department properly deny claimant's December 30, 2008 long-term care Medicaid (MA) application based on 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. Claimant is a married, 82-year-old male who entered long-term care on December 23, 2008, that being his first day of his first continuous period of care, as defined at PEM (now BEM) 402, pg 6 (Department Exhibit #2, pg 6).
2. In 2005, claimant and his spouse created a Revocable Living Trust; as co-grantors, they deeded their house into that trust by Quit Claim Deed dated [REDACTED] (Department Exhibit #3, pgs 27-29 and 49-69).

3. On December 30, 2008 (one week after claimant entered long-term care), a long-term care MA application was filed on his behalf (Department Exhibit #3, pgs 70-77).
4. While processing this application, the local office requested clarification from their Medicaid Policy Unit about the countability of claimant's sole trust asset (house), as required by PEM (now BEM) 401 (Department Exhibit #3, pg 49; Department Exhibit #4; Client Exhibit A , pgs 2 and 3).
5. By written memo dated February 20, 2009, the Medicaid Policy Unit deemed claimant's trust a "Revocable Trust", and also, replied in relevant part:

If the homestead has been transferred to the trust, it is no longer exempt and must be counted as an asset of the trust. Should the property be conveyed out of the trust back to the customer/community spouse, it would be exempt property effective the month it was transferred, if the property meets the homestead criteria listed in PEM 400, pgs 17-19 (Department Exhibit #4).
6. Claimant's long-term care MA application was filed on the exact date the attorney-of-record returned the couple's house to claimant's spouse from the trust by Quit Claim Deed (██████████) (Department Exhibit #3, pgs 79-80).
7. In compliance with the Medicaid Policy Unit's memorandum and the department's policy, claimant's application processing worker calculated the couple's Initial Asset Assessment and claimant's wife's Protected Spousal Amount (PSA) as of claimant's first continuous period of long-term care date, which mandates asset inclusion of the home in the trust having a Fair Market Value of ██████████, as properly verified by tax records (Department Exhibit #1, pg 2; Department Exhibit #2, pg 3; Department Exhibit #3, pgs 24-25).
8. When this amount was added to all the other verified, countable assets (those not in trust/not disputed), the application processing worker determined claimant's wife's Protected Spousal Amount (PSA: Defined by policy as one-half the initial assessment, but not more than ██████████ was ██████████ (Department Exhibit #1, pg 2; Department Exhibit #2, pg 7).

9. On February 4, 2009, the local office hearings co-ordinator recalculated the couple's Initial Asset Assessment and claimant's wife's Protected Spousal Amount (PSA) omitting the home's value (), which resulted in a significantly reduced PSA ()(Department Exhibit #1, pg 1).
10. At some point thereafter, claimant's wife and the attorney-of-record were notified that claimant's December 30, 2008 long-term care MA application was denied based on excess assets; however, no written negative action notice was submitted to determine precisely when this denial took place.
11. In response to this denial, the department received claimant's written hearing request dated April 7, 2009 (Department Exhibit #3, pg 2).
12. Claimant's hearing was held in the () () on February 2, 2010.
13. At first, the local office hearings co-ordinator (and sole departmental witness) claimed her Initial Asset Assessment and Protected Spousal Amount (PSA) calculations were correct, and thus, claimant was precluded due to excess assets from long-term care MA eligibility initially, as well as during the twelve month "presumed asset eligible period" defined and described at PEM (now BEM) 402, pg 4 (Department Exhibit #2, pg 4)(See also Finding of Fact #9 above).
14. By contrast, the attorney-of-record contended the first Protected Spousal Amount (PSA) calculated by claimant's application processing worker (now retired) is correct (), and thus, claimant must be presumed asset eligible under the governing policy, which specifically provides a twelve month grace period to allow any/all assets to be transferred to the community spouse before PEM (now BEM) 400 must be used to determine claimant's long-term care MA eligibility based solely on his assets (one-person group)(Department Exhibit #2, pg 4; Department Exhibit #3, pg 4, item #5)(See also Finding of Fact #8 above).
15. As the hearing progressed, the department's witness stipulated that, as of claimant's required initial assessment date (12/23/08), the house's value, combined with the couple's other financial holdings, resulted in claimant's countable assets for initial assessment determination purposes being () (Department Exhibit #1, pg 2).

16. As the hearing progressed, the department's witness stipulated claimant's wife's Protected Spousal Amount (PSA) was half that value (██████████)(Department Exhibit #1, pg 2)(See also Finding of Fact #1, #8 and #13 above).
17. As of claimant's disputed application filing month (12/08), he no longer had ██████████ for MA asset eligibility determination purposes because ownership of the house was transferred from the trust back to claimant's wife that month; consequently, it's value became exempt starting that month, consistent with the Medicaid Policy Unit's memo dated February 20, 2009 (See also Finding of Fact #5 above).
18. Exempting the house's value (██████████) resulted in claimant's countable assets being ██████████ in his application filing/processing month (██████████ - \$ ██████████ = ██████████) (Department Exhibit #1, pg 1).
19. The department's witness contends this asset value far exceeds the ██████████ MA asset limit set forth in PEM (now BEM) 400, pg 5 (Client Exhibit B, pg 5).
20. The attorney-of-record contends the department erroneously relied on the ██████████ to deny asset eligibility to claimant in December 2008 (defined as the application month, and also, as the month being tested) in complete disregard of the Special MA Asset Rules (PEM/BEM 402) designed for long-term care MA applicants like claimant who have homestead property, revocable trusts, community spouses and/or a combination thereof.

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).

Departmental policy states the long-term care MA asset limit is ██████████. Additionally, 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/BEM 400, pgs 4 and 5). Special MA Asset Rules direct the department's workers to calculate asset eligibility at initial application using a specific formula. This policy states:

SSI-Related MA (Initial Eligibility Formula)

The formula for asset eligibility is:

- The value of the couple's (his, her, their) countable assets for the month being tested
- **MINUS** the "protected spousal amount" (see below)
- **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in PEM 400 for the category(ies) being tested (PEM/BEM 402, pgs 3 and 9-10).

The evidence of record clearly establishes claimant's wife's Protected Spousal Amount (PSA) was [REDACTED] in the application processing month (See also Finding of Fact #16 above). Likewise, the evidence of record clearly establishes the value of the couple's countable assets was [REDACTED] in the application processing month (aka "the month being tested")(See also Finding of Fact #18 above).

The above-referenced policy requires the department's workers to subtract the Protected Spousal Amount (PSA) as determined using the couple's countable, combined assets in the month being tested [REDACTED]

Since this calculation results in negative countable assets, claimant most certainly did not exceed the [REDACTED] long-term care MA program's asset limit in the application processing month. As such, this Administrative Law Judge finds the department's baseless assertion to the contrary is simply erroneous and it cannot be upheld.

Furthermore, the department's Special MA Asset Rules require local office workers to continue an applicant's eligibility for twelve months (starting the month after the processing month) unless one of three stated policy exceptions exists, none of which apply in claimant's case. This is called the presumed asset eligible period (See PEM/BEM 402, pg 4 and Finding of Fact #14 above).

The evidence of record clearly establishes claimant was, in fact, also entitled to the presumptive eligible period pursuant to PEM/BEM 402, pg 4, which states in relevant part:

SSI-Related MA Only (Presumed Asset Eligible Period)

Applicants eligible for the **processing month** and recipients eligible for the first future month are

automatically asset eligible for up to 12 calendar months regardless of:

- Changes in their community spouse's assets, or
- The number of MA applications or eligibility determinations that occur during the period.

As such, the department's determination to the contrary simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously denied claimant's December 30, 2008 long-term care MA application based on excess assets, and also, erroneously refused to initiate the presumed asset eligible period as required by policy.

Accordingly, the department's denial is REVERSED, and this case is returned to the local office for MA authorization retroactive to December 2008, followed by a prompt eligibility review in accordance with the department's policy regarding the presumed asset eligible "end period" (BEM 402, pg 4), which could not be done while this appeal was pending. **SO ORDERED.**

/s/

Marlene B. Magyar
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 30, 2011

Date Mailed: March 30, 2011

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.

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