

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: 2009-26973  
Issue No: 2021  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 4, 2009  
Allegan 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 claimant's request for a hearing. After due notice, a telephone hearing was held on August 4, 2009. Claimant is deceased; however, he was represented by [REDACTED]

ISSUE

Did the department properly determine claimant had excess assets for Medicaid (MA) eligibility purposes at application?

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's spouse predeceased claimant, making him the sole owner of their homestead property.

(2) At all times relevant, this property's State Equalized Value (SEV) exceeded the department's qualifying MA asset limit (\$2,000).

(3) Claimant transferred this property to a pre-existing living trust, of which he was the named trustee via a Trust Amendment dated February 12, 2007 (Client Exhibit C, pgs 3 and 4).

(4) On March 9, 2009, claimant applied for long-term care MA to cover his nursing home expenses.

(5) In May, 2009, the department notified claimant in writing at his nursing home (██████████) that his application was being denied because his transfer of the property into the trust made it a countable asset for MA eligibility determination purposes (Department Exhibit #1, pgs 21-23).

(6) Claimant died on May 20, 2009.

(7) On May 21, 2009, claimant's son and Successor Trustee filed a hearing request to protest the denial.

#### 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 applicable departmental policy is clear. It states as follows:

## **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.

## **Overview of Asset Policy**

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but **not** for another program. Some programs do **not** count assets (see “PROGRAMS WITH NO ASSET TEST” below).

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

- . Availability
  - .. see “AVAILABLE”
  - .. see “JOINTLY OWNED ASSETS”
  - .. see “NON-SALABLE ASSETS”

Exclusions. PEM, Item 400, p. 1.

## **SSI Related MA**

All types of assets are considered for SSI-related MA categories. PEM, Item 400, p. 2.

### **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.

Additionally, claimant's trust meets the department's definition of a Medicaid Trust as set forth at PEM Item 401, pg 5. Medicaid Trusts are subject to countability in the following situations:

### **Countable Assets**

The following are countable assets.

- Assets that are countable using SSI-related MA policy in PEM 400. Do not consider an asset unavailable because it is owned by the trust rather than the person.
- The homestead of an L/H or waiver patient or the patient's spouse even if the home was transferred before the patient was institutionalized or approved for the waiver. PEM Item 401, pg 9.

The department properly followed the above-referenced policy to the letter in this case; therefore, no basis exists at the contested case level for reversal of this action.

Claimant's grievance centers on dissatisfaction with the department's current policy. Claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant had excess assets for MA eligibility purposes at application.

Accordingly, the department's action is *AFFIRMED*.

/s/  
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Marlene B. Magyar  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 6, 2009

Date Mailed: August 6, 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.

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.

MBM/db

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