

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: 2009-27369

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 8, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Tuesday, December 8, 2009. The claimant was not present, but was represented by her son and power of attorney, [REDACTED] who testified on her behalf. The claimant also had the business officer manager from [REDACTED] who testified on the claimant's behalf.

ISSUE

Did the department properly determine that the claimant was not eligible for Medical Assistance (MA) benefits as a result of 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) On March 23, 2009, the department caseworker received the claimant's application for MA with verification of bank statements, life insurance policies, and the claimant's son's power of attorney.

(2) On April 13, 2009, the department caseworker received a retroactive MA application for January 2009, February 2009, and March 2009. (Department Exhibit 57-58)

(3) The claimant receives [REDACTED] per month in Social Security Retirement, Survivor's and Disability Insurance (RSDI). (Department Exhibit 69)

(4) On March 23, 2009, the department caseworker received written verification of the claimant's life insurance policies and bank statements:

- Two life insurance policies from the [REDACTED] with the first one having a cash surrender value of [REDACTED] and the second one having a cash surrender value of [REDACTED]. (Department Exhibit 55-56)
- [REDACTED] with a cash surrender value of [REDACTED]. (Department Exhibit 41)

(5) On [REDACTED], the claimant's son and power of attorney purchased an irrevocable funeral contract for the claimant in the amount of [REDACTED]. (Department Exhibit 63-66)

(6) On April 8, 2009, the claimant's son and power of attorney paid the claimant's long-term care center of [REDACTED] for past months and [REDACTED] for April 2009 patient pay amount. (Department Exhibit 60)

(7) On April 17, 2009, the department caseworker calculated the claimant's eligibility for MA benefits to determine that the claimant was over the asset limit from January 2009 through March 2009 because her countable assets were more than the \$2,000 asset limit. (Department Exhibit 80-83)

- March 23, 2009 -- total countable assets were [REDACTED] from the cash surrender value of the claimant's [REDACTED] policy. (Department Exhibit 10)
- February 2009 -- total countable assets were [REDACTED] from the claimant's [REDACTED] checking account. (Department Exhibit 9)
- January 2009 -- total countable assets were [REDACTED] from the claimant's [REDACTED] checking account. (Department Exhibit 9)

(8) On April 17, 2009, the department caseworker sent the claimant a notice that she was not eligible for MA for January 2009, February 2009, and March 2009 because her countable assets were more than the \$2,000 asset limit. (Department Exhibit 74, 79, and 84)

(9) On April 17, 2009, the department caseworker determined that the claimant was eligible for MA beginning April 1, 2009, but that the claimant had excess assets from January 2009 through March 2009. (Department Exhibit 85-86)

(10) On May 28, 2009, the department received a hearing request, contesting the department's negative action.

(11) During the hearing, the claimant's son testified that he worked as diligently as possible to cash in the life insurance policies and pay the nursing home so that the claimant would be eligible for MA. The claimant's son and power of attorney stated that he sent letters and provided written verification that he had contacted the life insurance companies months before in January 2009 to get them to cash out the insurance policies. He also stated that he called numerous times, but the earliest he could get the checks were March 31, 2009 and April 1, 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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” PEM, Item 400.

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.

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. PEM, Item 400, p. 3.

Note: Do not deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.

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

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 400.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. PEM, Item 400, p. 4.

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.

AVAILABLE

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

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. PEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. PEM, Item 400, p. 6.

LIFE INSURANCE

SSI-Related MA

A **life insurance policy** is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. Pure Endowment Life Insurance Contracts pay out on a specific date in the future not just when the beneficiary dies, and does not meet the definition of life Insurance for Medicaid. PEM, Item 400, p. 23.

Life Insurance Definitions

SSI-Related MA

Cash surrender value (CSV) - the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value or the cash value. PEM, Item 400, p. 24.

Face value (FV) - the amount of the basic death benefit contracted for at the time the policy is purchased. It might be titled the face value, face amount, amount of insurance, amount of policy or sum insured. It does **not** include dividends or additional amounts payable because of accidental death or other special circumstances. PEM, Item 400, p. 24.

Insured - the person whose life the policy insures. PEM, Item 400, p. 24.

Insurer - the company that contracts with the policy owner. PEM, Item 400, p. 24.

Policy owner - the person who has the right to change the policy. This is usually the person who pays the premiums. The policy owner and the insured can be different people. PEM, Item 400, p. 24.

Life Insurance Value

SSI-Related MA

A life insurance policy is an asset if it can generate a CSV. A policy is the policy owner's asset.

- . A policy's value is its CSV. A policy can generate a CSV, but have a CSV of zero. Such a policy is an asset with zero value.

- . Generally, term insurance does **not** have a CSV. Whole or straight life policies generate a CSV.
- . The CSV usually increases over time. A loan against a policy reduces its CSV. Pre-death payment of the death benefit might reduce the CSV. See "**Accelerated Life Insurance Payments**" in PEM 500 about the payments received.
- . CSV and FV are **not** the same thing. PEM, Item 400, p. 24.

LIFE INSURANCE EXCLUSIONS

General SSI-Related MA Life Insurance Exclusion

SSI-Related MA Only

Look at each policy owner's life insurance separately.

Exclude the entire cash surrender value when the total **face values** of all policies a policy owner has for the **same insured** are \$1,500 or less. PEM, Item 400, p. 25.

Exceptions: Do **not** count the face value of:

- . Term insurance that does **not** generate a CSV.
- . Burial insurance. Burial insurance is an insurance policy whose terms prevent the use of its proceeds for anything other than payment of the insured's burial expenses. A policy is **not** burial insurance if the policy has a CSV the owner can access. A policy used for "**Life Insurance Funded Funerals**" below is **not** burial insurance. Michigan does not have burial insurance, but a person from another state could have such insurance.
- . Endowment policies. An **Endowment policy** is a policy which enables the insured to accumulate a sum of money payable to him at a date named in the policy (the maturity date). The policy says whether the money is paid over time or all at once. The policy matures on the maturity date. A matured endowment policy is **not** life insurance. PEM, Item 400, p. 25.

Assets must be considered in determining eligibility for Social Security Medical Assistance categories. The department has to considered cash, investments, retirement plans, and trusts. PEM, Item 400, p. 1. Assets mean cash, any other personal property, and real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability test and is not excluded. PEM, Item 400, p. 1. In the instant case, there was no argument as to the amount of assets that the claimant had.

A preponderance of the evidence on the record establishes that the claimant had countable assets in excess of \$2,000 for the months of January 2009, February 2009, and March 2009. The Medical Assistance asset limit for a person in the claimant's circumstances is \$2,000. Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's MA application due to excess assets for the months of January 2009, February 2009, and March 2009.

The claimant's son and power of attorney was quite diligent in taking the steps necessary to qualify his mother, the claimant, for MA benefits. He was expeditious in writing the insurance companies to cash out the insurance policies, but did not receive the payouts by the companies until March 31, 2009 and April 1, 2009. The claimant's son and power of attorney was very diligent in paying the nursing home and purchasing an irrevocable funeral contract by [REDACTED] [REDACTED] which contributed to the claimant being eligible for MA for the month of April 2009 forward. However, the claimant is still not eligible for MA for the contested time periods of January 2009, February 2009, and March 2009 because the claimant's assets were over the \$2,000 asset limit.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that the claimant's application for retroactive MA benefits for the months of January 2009, February 2009, and March 2009 should be denied based upon the fact that the claimant possessed excess assets. The claimant was approved for benefits from April 2009 forward.

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

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 11, 2010

Date Mailed: January 11, 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.

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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.

CGF/vmc

cc:

