

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

By: [REDACTED],
POA

Reg. No: 2009-27689

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 20, 2009

Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 20, 2009, in Big Rapids. Claimant resides in a long-term care facility and was unable to appear at the hearing. Claimant was represented by her power of attorney.

Claimant's power of attorney was represented by [REDACTED]

[REDACTED]).

The department was represented by Patricia McHugh (FIM) and Tammy K. Solis (ES) and Nancy Wright (ES).

ISSUES

(1) Did the department correctly deny MA-M/LTC benefits for the months of September, October and November 2008 due to excess assets: A revocable prepaid funeral contract and two bank accounts?

(2) Did the department commit reversible error because it did not issue an eligibility decision within 45 days of the application (December 19, 2008), as required by the department's standard of promptness (SOP) policy?

(3) Did the department commit reversible error because it did not issue a DHS-8A notice upon receiving claimant's MA-M/LTC application on December 19, 2009?

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 an MA-M/LTC retro applicant. Claimant is a resident of a long-term care facility and was unable to attend the hearing.

(2) On October 7, 1999, claimant appointed her son to be her power of attorney (POA). The POA retained the [REDACTED] to pursue MA-M/LTC benefits for claimant. [REDACTED] specializes in MA-M eligibility cases.

(3) On September 29, 2008, [REDACTED] filed an MA-M/LTC retro application on claimant's behalf for the months of September, October and November 2008.

(4) On the application date, [REDACTED] reported a prepaid funeral contract (PFC) owned by claimant and asked the department to treat it as an exempt asset for MA-M/LTC purposes.

(5) The department correctly valued claimant's PFC at \$1,740.

(6) On the application date, the PFC was a countable asset for MA-M/LTC eligibility purposes.

(7) On September 29, [REDACTED] reported the following additional assets, which were correctly designated as countable assets for MA-M/LTC eligibility purposes.

[REDACTED]	\$187.90
[REDACTED]	<u>\$507.05</u>

Bank Account Total \$694.95

- (8) On the date of application, the department correctly valued claimant's

MA-M/LTC assets at \$2,434: \$694 in bank accounts and \$1,740 in an irrevocable PFC.

- (9) On December 10, 2008, the department emailed an agent of [REDACTED] as follows:

A worker was in the process running budgets for this application and found that we have no verification of the [REDACTED] bank statement.

Worker only has the [REDACTED].

Would you be able to get this verification? We would need the September bank statement.

- (10) On December 10, 2008, [REDACTED] replied by email as follows:

I will get on it.

- (11) On December 10, 2008, the department sent a second email to [REDACTED] as follows:

Thanks,

Also do you know if the prepaid funeral agreement was ever made irrevocable?

If not, worker will be using \$1,740 as an asset; the remaining amount of the contract could be excluded.

- (12) On December 10, 2008, [REDACTED] replied by email:

Isn't the irrevocable Form something that is usually sent by DHS?

- (13) On December 16, 2008, [REDACTED] sent the department the following email:

I contacted [REDACTED] at [REDACTED] again today regarding [REDACTED] Irrevocable Funeral Contract certification form. He had told me last week that he mailed it. Today, he said he would check with his assistant, [REDACTED], to make sure she mailed it. Regardless - I don't have it yet, but will supply it as soon as it is received and a signature can be obtained by the POA.

* * *

(14) On December 19, 2008, [REDACTED] verified that claimant's **revocable** funeral contract (FC) was converted to an **irrevocable** FC.

(15) On February 4, 2009, the department mailed a Denial Notice stating that claimant's retro application for September, October, and November 2008 was denied because claimant's MA assets were over the \$2,000 limit.

(16) The department issued MA-M/LTC benefits for December 2008 because the irrevocable FC was exempt for MA-M/LTC purposes.

(17) The department's Denial Notice was issued 89 days after [REDACTED] provided the department with all the necessary verifications.

(18) On May 5, 2009, claimant filed a timely hearing request to challenge the department's denial of retro MA-M/LTC benefits.

(19) At the hearing, the POA stated that claimant's account at the [REDACTED] contained co-mingled funds (his social security). The POA thinks claimant's checking account should not be used as a countable asset for MA-M/LTC purposes. This information was not provided to the department on the date of application.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

(1) [REDACTED] correctly reported claimant's assets and other required eligibility information on the date the application was filed.

(2) At the time claimant's application was denied, DHS policy permitted DHS to disregard a prepaid funeral contract that was irrevocable.

(3) The department incorrectly denied claimant's MA-M/LTC application because the determination was not made within 45 days.

(4) The department incorrectly denied claimant's MA-M/LTC application because the department did not issue a DHS-8A at the time the application was filed.

DEPARTMENT'S POSITION

(1) Claimant's application was incomplete on the date it was filed.

(2) Claimant's application did not contain proper verification of the [REDACTED] Bank account on the date it was filed.

(3) In December 2008, the department sent [REDACTED] an email requesting clarification on the [REDACTED].

(4) On December 10, 2008, the department sent [REDACTED] an email requesting verification of the **prepaid funeral agreement** which claimant was submitting to the department for eligibility purposes.

(5) The reason the department did not issue a decision with the 45-day standard of promptness is claimant's September 29, 2008 application was not complete on the date it was filed.

(6) The department made a good faith effort to obtain the necessary verifications and to decide claimant's eligibility within the standard of promptness requirement (45 days from the date the application was complete).

(7) The department was not required to provide the law firm ([REDACTED]) with an [REDACTED], [REDACTED] [REDACTED], because [REDACTED] is a specialist in the area of Medicaid eligibility and was aware of the DHS-8A and the policy permitting irrevocable prepaid funeral contracts to be treated as an exempt asset for eligibility purposes. [REDACTED] did not exercise due diligence; it was required to provide a completed [REDACTED] to the department at the time of application. **Department employees are not permitted to practice law.** See PAM 805 (effective July 1, 2008).

(8) █████ did not complete the verification process on claimant's application until December 10, 2008, when it submitted the █████ statements.

(9) The department left claimant's application open for an extended period (September 29, 2008 to December 10, 2008), 72 days, to accommodate claimant.

(10) The SOP "clock" started running on December 11, 2008, the day after █████ completed claimant's application.

(11) The department had 45 days after the application was completed to issue its eligibility decision.

(12) The SOP due date was January 25, 2009.

(13) The department issued the eligibility denial on February 4, 2009.

(14) The department's Denial Notice was 10 days late.

(15) Due to the 72-day delay from September 29 to December 10, which was caused by insufficient eligibility verifications, the 45-day SOP processing time was pushed into the Christmas and New Year's holiday. Many DHS State employees were on vacation at this time. The department is officially closed six days during the Holidays.

CONCLUSIONS OF LAW

LEGAL BASE

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 Medicaid program provides medical insurance to low income persons. The asset eligibility standards are found in PEM 403. Currently, the MA-M/LTC asset limit for one person is \$2,000 (PEM 400).

PAM 115, provides that the department shall make a decision on an MA-M/LTC application within 45 days of the receipt of a (complete) application.

Current policy provides that claimant may use an irrevocable prepaid funeral contract to spend-down to MA-M assets. PEM 400, PAM 805.

ISSUE #1

The excess asset decision made by the department is correct for the following reasons:

(a) Claimant's two bank accounts were countable assets (\$694). Claimant's revocable PFC was a countable asset (\$1,740). Claimant's total countable assets for MA retro purposes were (\$2,434.95). Claimant's countable assets exceeded \$2,000 at time of application.

(b) Claimant's attorney (██████████) did not notify the department that claimant's power of attorney had co-mingled his social security funds with claimant's funds in the ██████████ bank account, at the time the application was filed. The notice which the power of attorney provided on August 20 (the date of the hearing) was untimely.

(c) The revocable funeral contract was countable and properly valued by the department. PEM 400, PAM 805.

(d) ██████████ did not notify the department that the **revocable** funeral contract had been converted to an **irrevocable** funeral contract until after the department denied claimant's retro applications for September, October and November 2008.

Since the MA-M/LTC asset limit in September, October, and November was \$2,000, claimant had excess MA-M/LTC assets for eligibility purposes in the months of September,

October, and November 2008. Claimant was not eligible in September, October and November due to excess assets.

Therefore, the caseworker correctly denied claimant's MA-M/LTC application for retro for the months of September, October, and November. **The department correctly approved claimant for MA-M/LTC for December 2008.**

ISSUES 2 & 3

The department's failure to issue an eligibility determination within the 45-day standard of promptness is not reversible error for the following reasons:

(a) The eligibility verifications provided by claimant's attorney were incomplete on date of application. The source of the funds in claimant's checking accounts, and the status of claimant's prepaid funeral contract was unclear on the date the application was filed.

(b) The 45-day standard of promptness does not start until all necessary verifications, as determined by the worker, are provided. This was not done until the source of funds information for claimant's [REDACTED] checking accounts was provided on December 10, 2008.

(c) The lack of certainty about the status of the Prepaid Funeral Contract required the department to ask [REDACTED] for additional verification.

(d) The delay in processing claimant's MA-M/LTC application was primarily caused by [REDACTED] did not submit a complete application and did not respond to the department's request for additional verifications in a prompt and professional manner.

The department's failure to issue a DHS-8A [REDACTED] is not reversible for the following reasons:

(a) [REDACTED] did not request a DHS-8A on the date the application was filed. [REDACTED], being established in the area, was acutely aware of the DHS-8A requirement. As claimant's attorney, [REDACTED] had a duty of due diligence; this includes providing a DHS-8A, on the date of application.

(b) The department's caseworker, in good faith, sent an email to [REDACTED] on December 10, 2008, requesting verification of the status of the revocable funeral contract.

(c) As a specialist in elder law and Medicaid eligibility, [REDACTED] should have known the DHS-8A was required in order to convert claimant's **revocable** funeral contract to an **irrevocable** funeral contract.

(d) Since [REDACTED] is a specialist in the area of Medicaid eligibility, it was disingenuous for the law firm not to ask for DHS-8A on the date the application was filed, and then chastise the department for not providing one.

In short, claimant has not met her burden of proof to show that the department's denial of claimant's retro MA application was the result of reversible error.

Based on a careful review of the evidence in the record, the Administrative Law Judge concludes claimant was not eligible for MA-M/LTC benefits in September, October, and November 2008 due to excess countable assets.

Claimant requests equitable relief to establish an earlier date of application. However, the Administrative Law Judge does not have equitable powers. [REDACTED]

[REDACTED]

There is no evidence of arbitrary or capricious action by the department on this record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly denied claimant's September, October and November 2008 MA-M/LTC retro application due to excess assets.

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

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 20, 2010

Date Mailed: April 20, 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.

JWS/tg

cc:

