

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: 2009-2969

Issue No: 2014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 26, 2009

Marquette 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 Wednesday, August 26, 2009. The claimant personally appeared and testified on her own behalf, with her husband, [REDACTED], as a witness.

ISSUE

Did the department properly cancel the claimant's MA benefits based upon its determination that the claimant had excess income?

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 October 13, 2008, the claimant filed an application for TMA-Plus for a TMA-Plus review application.

(2) On October 13, 2008, the department caseworker determined that the claimant was not eligible because the household income exceeded the limit for the program because the claimant's husband had received a promotion at work where his earned income was [REDACTED] for the period ending September 13, 2008 and [REDACTED] for the period ending September 27, 2008. (Department Exhibit 5-6) In addition, the claimant received child support in the amount of [REDACTED]. The claimant had excess income of \$212 for the TMA-Plus program (Department Exhibit 4):

- The claimant received [REDACTED] in child support with a \$50 child support deduction, resulting in [REDACTED] in net child support.
- The claimant had a net income of [REDACTED], resulting from a net earning of [REDACTED] and [REDACTED] in net child support.
- For a group size of four, the TMA-Plus income limit is \$3,269, but the claimant's household income was [REDACTED], resulting in excess income of \$212.

(3) On October 13, 2008, the department caseworker sent the claimant a notice that her TMA-Plus coverage would be cancelled effective October 31, 2008 because the claimant's income is more than the limit.

(4) On October 15, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 17, 2008, the negative action was deleted because the claimant made a timely hearing request.

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**

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see PEM 405). 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.

Lump Sums and Accumulated Benefits

FIP, SDA and AMP Only

Lump-sums and accumulated benefits are assets starting the month received.

A person might receive a single payment that includes both accumulated benefits and benefits intended as a payment for the current month. Treat the portion intended for the current month as income. PEM, Item 400, p. 9.

LIF, G2U, G2C, SSI-Related MA

Lump sums and accumulated benefits are income in the month received. See PEM 500 about countable income policy.

Exception: The following are assets:

- . Income tax refunds
- . Nonrecurring proceeds from the sale of assets
- . Payments that are excluded assets PEM, Item 400, p. 10.

RETIREMENT PLANS

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

This section is about the following types of assets:

- . Individual retirement accounts (IRAs)

- . Keogh plans (also called H.R. 10 plans)
- . 401k plans
- . Deferred compensation
- . Pension plans
- . Annuities--An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. PEM, Item 400, pp. 14-15.

INCOME

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives, because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount. PEM, Item 500, p. 1.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded. PEM, Item 500, p. 1.

DEPARTMENT PHILOSOPHY

The Department's income budgeting policies are designed to support financial self-sufficiency by encouraging families to pursue all available means of income. We offer deductions from

earned income so that families are financially advantaged by working. Staff should stress to clients the advantages of obtaining outside income. PEM, Item 518, p. 1.

Standard Monthly Amount

Stable and Fluctuating Income

A standard monthly amount must be determined for each income source used in the budget.

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- . Multiply weekly income by 4.3.
- . Multiply amounts received every two weeks by 2.15.
- . Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Exception: Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. PEM, Item 505, p. 7.

MA GROUP COMPOSITION

DEPARTMENT POLICY

LIF

Group composition policy for Low-Income Families (LIF) is in PEM 110. Do not use the policy in this item to determine group composition for LIF. PEM, Item 211, p. 1.

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Use fiscal groups and, for SSI-related MA, Group 2 Persons Under Age 21 and Group 2 Caretaker Relative, asset groups to determine the financial eligibility of a person who requests MA and meets all the nonfinancial eligibility factors for an MA category.

Individual family members may be eligible under different MA categories. You must explore all categories for each person who

requests MA. See "CHOICE OF CATEGORY" in PEM 105.
PEM 211, p. 1.

In this case, the claimant had previously been eligible for TMA-Plus. However, her husband received a promotion with a salary increase that put the claimant's household over the income limit for TMA-Plus by \$212. As a result, on October 13, 2008, the department caseworker sent the claimant a notice that her TMA-Plus coverage would be cancelled effective October 31, 2008 because of excess income.

Therefore, the department has established that it was acting in compliance with department policy by determining that the claimant was not eligible to receive TMA-Plus MA benefits because the claimant had excess income.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that that the department appropriately cancelled the claimant's TMA-Plus MA benefits because of excess income.

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

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

Date Signed: October 7, 2009

Date Mailed: October 8, 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 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:

