

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

IN THE MATTER:

[REDACTED]

Reg No. 201932363
Issue No. 2012
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: May 13, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 May 13, 2010. Claimant was represented by [REDACTED].

ISSUE

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance (MA) benefits.

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 or about December 30, 2008, claimant applied for MA and retroactive MA. Per claimant's statement on the application, claimant was a resident of long term care (LTC) effective July 24, 2008. Claimant's spouse resided in their home. Department Exhibit A, pg 8.
2. On or about June 17, 2009, the department prepared initial assessments and asset records for claimant and his spouse for the months of September 2008 through December 2008. The initial assessment date was July 21, 2008. Claimant's total countable

assets were determined to be [REDACTED] for September 2008, [REDACTED] for October 2008, [REDACTED] for November 2008, and [REDACTED] for December 2008. Department Exhibit A, pgs 53-61.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department manuals provide the following policy statements and instructions for caseworkers:

Countable assets cannot exceed the applicable asset limit. 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. The asset limit for SSI-related MA, asset group of 1 is \$2000.

Not all assets are counted.

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

- An asset is countable if it meets the availability tests and is not excluded.
- 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.
- Assume an asset is available unless evidence shows it is not available.

Exclude the asset group's homestead.

Program Eligibility Manual (PEM) 400P.A. 280 of 1939, as amended Social Security Act, Sections 1902(a)(10); (r)(2)

Deficit Reduction Act of 2005
42 CFR 435.840 - .845
MCL 400.106

Use this item to determine asset eligibility for **each** continuous period of care (see "DEFINITIONS" below) that began on or after 9-30-89 when an L/H or waiver client:

- Has a community spouse (see below), and
- A presumed asset eligible period has not yet been established, or
- If established, the presumed asset eligible period has not ended.

Community spouse - Client's spouse when the spouse:

- Has **not** been, and is **not** expected to be, in a hospital and/or LTC facility for 30 or more consecutive days; and
- For waiver clients only, the spouse is **not** also approved for the waiver.

Continuous period of care - A period of at least 30 consecutive days where the institutionalized spouse/applicant has been, or is expected to be:

- In a hospital, and/or
- In an LTC facility, and/or
- Approved for the waiver as defined in BEM 106.

The period is no longer continuous when none of the above are true for 30 or more consecutive days.

The formula for asset eligibility is the value of the couple's (his, hers, their) countable assets for the month being tested, minus the "protected spousal amount". The resulting asset figure must not exceed the limit for one person as so stated in BEM 400 for the categories being tested. The community resource protected spousal allowance is the protected spousal amount minus the value of the community spouse's current countable assets (NOT assets jointly owned by the community spouse and the client).

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the greatest of the amounts listed below:

1. \$20,880.00 effective January 1, 2008.
2. One-half the initial assessment amount, but not more than \$104,400.00 effective January 1, 2008.
3. The amount determined in a hearing per BAM 600.

4. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:
5. Pay support to the community spouse, and transfer assets to the community spouse for the support of the community spouse or a family member.

Bridges Eligibility Manual (BEM) 402; Social Security Act, Sections 1915 (c) and 1924.

In this case, the Administrative Laws Judge has examined the record and finds that the department properly determined claimant's initial assessment, asset record, and countable MA assets. At hearing, claimant's representative asserted that the "snapshot date" led to an inaccurate asset determination. The record and the department policy does not support this assertion. Claimant states he entered LTC July 24, 2008. The department budget states that he entered LTC on July 21, 2008. The difference in dates does not create an error material to the initial assessment and asset record. The value of the assets are correctly calculated and determined to be countable. A community spouse resource allowance (protected spousal amount less value of community spouse's countable assets; BEM 402) does not apply unless the applicant is MA eligible in the processing month. As such, a preponderance of the evidence establishes that the department properly determined claimant's eligibility for MA. Accordingly, its action must be upheld. Finding of Fact 1-2.

DECISION AND ORDER

The Administrative Law Judge based upon the above findings of fact and conclusions of law, decides the Department of Human Services acted in compliance with department policy when it determined claimant's eligibility for Medical Assistance benefits.

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

/s/_____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 10, 2010

Date Mailed: December 13, 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.

JAB/db

cc:

