

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

IN THE MATTER OF: [REDACTED]

[REDACTED]
C/O [REDACTED]
[REDACTED]

Reg. No: 2009-32706
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 April 29, 2010. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) based upon its determination that claimant possessed excess countable available 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 February 27, 2009, the department received a partial application for MA for claimant in the Ingham County office.
- (2) On March 27, 2009, the department received a completed application for claimant and an asset declaration. A completed IAA for January 16, 2009, for the [REDACTED] had a total of \$ [REDACTED] including a homestead in which claimant and his wife had placed in a revocable trust dated October 14, 1999.
- (3) A quitclaim deed submitted transferring the home to claimant from the trust was dated February 24, 2009, but the deed is not registered. (Claimant Attachment #1)

- (4) On [REDACTED] claimant passed away. Public records still show the home to be in the trust as of 7/15/09.
- (5) On April 28, 2009, claimant's attorney indicated that the quitclaim is not registered and there was no requirement to register the quitclaim deed.
- (6) On May 14, 2009, the trust was evaluated and per evaluation the homestead was counted as an asset because the quitclaim deed was not registered; the homestead remained in the trust.
- (7) On May 26, 2009, the department issued a policy statement indicating that the homestead is considered still in the trust if the quitclaim was not registered.
- (8) On May 30, 2009, the application was denied stating that the group was not asset eligible. Appropriate notice was sent to claimant's representative.
- (9) On June 23, 2009, public records still show the home to be in the trust. On May 30, 2009, the department caseworker sent claimant and his representative notice that the application was denied based upon excess assets.
- (1) On June 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

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 (BEM) and the Program Reference Manual (PRM).

In the instant case, claimant disputes the Department's decision to request a policy clarification and its determination that the homestead was considered a part of the trust and therefore a countable, available asset. The claimant provided the department with a copy of the trust which was irrevocable. The trust listed claimant and his wife as Trustees. The homestead was listed as a trust property. The original homestead Quitclaim deed was properly recorded with the Ingham County Register of Deeds in 2002. (Client's Attachment #2 page 4 of 5) The second Quitclaim Deed, which was not recorded, purports to transfer the homestead from the trust to claimant's wife. (Claimant's Attachment #2 page 5 of 5)

Title XIX of the Social Security Act, commonly referred to as “The Medicaid Act,” provides for medical assistance services to individuals **who lack the financial means to obtain needed health care**. 42 U.S.C. §1396. (Emphasis added)

The Medicaid program is administered by the federal government through the Centers for Medicaid and Medicare Services (CMS) of the Department of Health and Human Services (HHS). The state and federal governments share financial responsibility for Medicaid services. Each state may choose whether or not to participate in the Medicaid program. Once a state chooses to participate, it must operate its Medicaid program in accordance with mandatory federal requirements, imposed both by the Medicaid Act and by implementing federal regulations authorized under the Medicaid Act and promulgated by HHS.

Participating states must provide at least seven categories of medical services to persons determined to be eligible Medicaid recipients. 42 USC §1396a(a)(10)(A), 1396d(a)(1)-(5), (17), (21). One of the seven mandated services is *nursing facility services*. 42 USC §1396d(a)(4)(A).

For medical assistance eligibility, the Department has defined an asset as “any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.” NDAC 75-02-02.1-01(3). Under both federal and state law, an asset must be “actually available” to an applicant to be considered a countable asset for determining medical assistance eligibility. [Hecker, 527 N.W.2d at 237 \(On Petition for Rehearing\)](#); [Hinschberger v. Griggs County Social Ser v.](#), 499 N.W.2d 876, 882 (N.D.1993); [42 U.S.C. § 1396a\(a\)\(17\)\(B\)](#); 1 J. Krauskopf, R. Brown, K. Tokarz, and A. Bogutz, *Elderlaw: Advocacy for the Aging* § 11.25 (2d ed. 1993). Yet, “actually available” resources “are different from those *in hand*.” [Schweiker v. Gray Panthers](#), 453 U.S. 34, 48, 101 S.Ct. 2633, 2642, 69 L.Ed.2d 460 (1981) (emphasis in original). NDAC 75-02-02.1-25(2) explains: Only such assets as are actually available will be considered. Assets are actually available when at the disposal of an applicant, recipient, or responsible relative; when the applicant, recipient, or responsible relative has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care; or when the applicant, recipient, or responsible relative has the lawful power to make the asset available, or to cause the asset to be made available. Assets will be reasonably evaluated... See also [45 C.F.R. § 233.20\(a\)\(3\)\(ii\)\(D\)](#).

As noted in *Hecker*, if an applicant has a legal ability to obtain an asset, it is considered an “actually available” resource. The actual-availability principle primarily serves “to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes non-existent resources to recipients.” [Heckler v. Turner](#), 470 U.S. 184, 200, 105 S.Ct. 1138, 1147, 84 L.Ed.2d 138 (1985).

The focus is on an applicant's actual and practical ability to make an asset available as a matter of fact, not legal fiction. See [Schrader v. Idaho Dept. of Health and Welfare](#),

[768 F.2d 1107, 1112 \(9th Cir.1985\)](#) . See also [Lewis v. Martin, 397 U.S. 552, 90 S.Ct. 1282, 25 L.Ed.2d 561 \(1970\)](#) (invalidating California state regulation that presumed contribution of non-AFDC resources by a non-legally responsible and non-adoptive stepfather or common law husband of an AFDC recipient's mother).

Determining whether an asset is “actually available” for purposes of medical assistance eligibility is largely a fact-specific inquiry depending on the circumstances of each case. See, e.g., [Intermountain Health Care v. Bd. of Cty. Com'rs, 107 Idaho 248, 688 P.2d 260, 264 \(Ct.App.1984\)](#); [Radano v. Blum, 89 A.D.2d 858, 453 N.Y.S.2d 38, 39 \(1982\)](#); [Haynes v. Dept. of Human Resources, 121 N.C.App. 513, 470 S.E.2d 56, 58 \(1996\)](#). Interpretation of the “actually available” requirement must be “reasonable and humane in accordance with its manifest intent and purpose...” [Moffett v. Blum, 74 A.D.2d 625, 424 N.Y.S.2d 923, 925 \(1980\)](#).

That an applicant must sue to collect an asset the applicant has a legal entitlement to usually does not mean the asset is actually unavailable. See, e.g., [Wagner v. Sheridan County S.S. Bd., 518 N.W.2d 724, 728 \(N.D.1994\)](#); [Frerks v. Shalala, 52 F.3d 412, 414 \(2d Cir.1995\)](#); [Probate of Marcus, 199 Conn. 524, 509 A. 2d 1, 5 \(1986\)](#); [Herman v. Ramsey Cty. Community Human Serv., 373 N.W.2d 345, 348 \(Minn.Ct.App.1985\)](#). See also [Ziegler v. Dept. of Health & Rehab. Serv., 601 So.2d 1280, 1284 \(Fla.Ct.App.1992\)](#). At issue here is the methodology utilized in determining the availability of an individual's “resources” for purposes of evaluating his or her eligibility. SSI recipients, and thus SSI-related “medically needy” recipients, may not retain resources having a value in excess of \$2,000. [42 U.S.C. § 1382\(a\)\(1\)\(B\)](#).

The regulations governing the determination of eligibility provide that resources mean cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his support and maintenance. If the individual has the right, authority or power to liquidate the property, or his share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse). [20 C.F.R. § 416.1201\(a\)](#).

Under BEM, Item 400, an eligible Medical Assistance recipient may not possess in excess of \$2000 in assets. In the present case, claimant and his wife received the deed in a revocable trust. Since the homestead was listed in the trust, the claimant provided inconsistent and contradictory information. There is no trust revocation document available.

The department determined that the home was a countable asset until the deed was filed with the county register of deeds.

Under BEM, Item 400, an eligible Medical Assistance recipient may not possess in excess of \$2000 in assets. In the present case, claimant and his wife placed their homestead in a revocable trust in 1999. Claimant's representative indicates that the homestead was transferred solely to the wife from the trust on February 24, 2009. The

department determined that the home was a countable asset until the deed was filed with the county register of deeds. Pertinent Department Policy in BEM, Item 400 page one indicates that Assets must be considered in determining eligibility for FIP, SDA, RAPC, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA categories and AMP.

FIP, SDA, RAPC, LIF, G2U, G2C and AMP consider only the following types of assets:

- . Cash (which includes savings and checking accounts).
- . Investments.
- . Retirement Plans.
- . Trusts.

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). BEM, Item 400, page 1. Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. An asset is countable if it meets the availability tests and is **not** excluded. Available means that someone in the asset group has the right to use or dispose of the asset. BEM, Item 400, page 5. All types of assets are considered for SSI-related MA. BEM, Item 400, page 2. For Medicare Savings Programs (BEM 165) and QDWI (BEM 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. BEM, Item 400, page 5.

HOMES AND REAL PROPERTY EXCLUSIONS

Homestead Definition and Exclusion

SSI-Related MA Only

A homestead is where a person lives (unless "**Absent from Homestead**") that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude the asset group's homestead. Exclude only one homestead for an asset group. BEM, ITEM 400, page 20.

SSI-Related MA Only

Exclude a homestead that an owner formerly lived in if **any** of the following are true:

- . The owner intends to return to the homestead.
- . The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.
- . A co-owner of the homestead uses the property as his home. BEM, Item 400, pp. 19-20.

Relative Occupied . Exclude a homestead even if the owner never lived there, provided:

- . the owner is in an institution (see PRM, Glossary), and
- . the owner's spouse or relative (see below) lives there. BEM, Item 400, pp. 19-20.

Relative for this purpose means a person dependent in any way (financial, medical, etc.) on the owner and related to the owner as any of the following:

- . Child, stepchild or grandchild
- . Parent, stepparent or grandparent
- . Aunt, uncle, niece or nephew
- . Cousin
- . In-law

Brother, sister, stepbrother, stepsister, half brother or half sister. BEM, Item 400, pp. 19-20

In the instant case, the claimant provided the department with a copy of the trust which was revocable. The homestead was listed as a trust property. The Quitclaim Deed purporting to transfer the homestead from the trust was not filed with the County Register of Deeds.

The County Register of Deeds records indicate that the property was transferred to [REDACTED]. There was no updated deed registered nor any deed registered which indicated that the property had been transferred to claimant's spouse. The claimant's representative provided inconsistent information, which is surely a justification for the Department Specialist to request a Policy Clarification. Two deeds, one filed and one unfiled certainly creates an air of uncertainty. Therefore, the department properly denied claimant's application for Medical Assistance based upon its determination that claimant possessed an excess of \$ [REDACTED] of countable available

assets. The department was unable to determine which of the deeds was the valid one and would therefore have been unable to determine which of the deeds was valid. Michigan Compiled Laws Section 565.3 states that:

A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

Michigan Compiled Laws Section 565.8 states:

Deeds executed within this state of lands, or any interest in lands, shall be acknowledged before any judge, clerk of a court of record, or notary public within this state. The officer taking the acknowledgment shall endorse on the deed a certificate of the acknowledgment, and the true date of taking the acknowledgment, under his or her hand. Any deed that was acknowledged before any county clerk or clerk of any circuit court, before September 18, 1903, and the acknowledgment of the deed, and, **if recorded, the record of the deed, shall be as valid for all purposes so far as the acknowledgment and record are concerned,** as if the deed had been acknowledged before any other officer named in this section, and the legality of the acknowledgment and record shall not be questioned in any court or place. If a deed has been recorded that lacks 1 or more witnesses and the deed has been of record for a period of 10 years or more, and is otherwise eligible to record, the record of the deed shall be effectual for all purposes of a legal record and the record of the deed or a transcript of the record may be given in evidence in all cases and the deed shall be as valid and effectual as if it had been duly executed in compliance with this section. (Emphasis added)

The following prove ownership and/or value of assets:

Deed, mortgage, personal agreement or contract, state equalized value on current property tax records when supplied by the attorney and court workers, county records, statement of real estate agent or financial institution. BEM, Item 400, p. 36

Thus, the attempt to remove the homestead from the trust without properly filing the document with the County Register of Deeds or revoking the trust provision is an attempt to make the homestead an exempt asset to claimant. This can only be viewed as an attempt to circumvent the Medicaid laws and allow claimant's potential heirs to retain the assets instead of paying for his long term care as is appropriate under the circumstances. *Allen v. Wessman*, 542 N.W.2d 748, 753 (N.D. 1996) ("Public policy will not allow the social safety net for persons who are old, poor, and unfortunate to be exploited by those who are affluent."); *Meyer v. S.D. Dep't. of Soc. Services*, 581 N.W.2d 151, 156-58 (S.D. 1998); see also *Johnson v. Guhl*, 166 F. Supp. 2d 42, 51 (D.N.J. 2001) ("HCFA's position does not frustrate Congress' intent in enacting the MCCA to enable the community spouse to live above the poverty level. Instead, it ensures that Medicaid, as it was intended, helps the **truly needy** and furthers the legislature's intent to **require couples to bear a reasonable amount of the costs of institutionalized care and thus preserve Medicaid resources.**"). (Emphasis added)

In the instant case, there are two deeds . One deed is registered with the County Register of Deeds. The second is unregistered. The information that the claimant's representative provided to the department is therefore inconsistent and contradictory. The department is allowed to verify inconsistent or questionable information. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- . Required by policy. BEM items specify which factors and under what circumstances verification is required.
- . Required as a local office option. The requirement must be applied the same for every client. Local requirements may not be imposed for MA, TMA-Plus or AMP.
- . Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Verification is **not** required:

- . When the client is clearly ineligible, or
- . For excluded income and assets unless needed to establish the exclusion. BEM, Item 130, page 1.

For verification purposes the Department is required to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to three times. Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email), the date of the transmission is the receipt date. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a DHS representative are considered to be received the next business day. Send a case action notice when:

- . The client indicates refusal to provide a verification, or
- . The time period given has elapsed.

Only adequate notice is required for an application denial. **Timely** notice is required to reduce or terminate benefits. BEM, Item 130, page 5.

In the instant case, the information provided by claimant's representative was contradictory. The Department was unable to make an accurate assessment of claimant's assets under the circumstances. If the Homestead remained in the trust claimant would have had in excess of \$2,000.00 in countable available assets. Even if the Homestead had been removed from the trust the client might have had excess assets. The determining factor in the instant case is that the Department was unable to

determine which deed controls and claimant's representative failed to provide sufficient evidence that second unrecorded deed supersedes the prior properly recorded deed.

The Department afforded claimant's representative ample time to provide verification information in the form of a recorded deed which would have established that the homestead belonged to claimant's wife and not to the trust. The claimant's representative did not provide the verification information. Therefore, 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 denied claimant's application for Medical Assistance benefits under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant provided the department with inconsistent information. The trust document indicates that the homestead was a part of the trust property. The quitclaim deed provided by the claimant's attorney indicates that claimant quitclaimed the property to his wife, but that deed was never filed with the register of deed. Therefore, there is no indication that the trust was actually revoked and the homestead removed from the trust. The representative provided inconsistent and contradictory evidence and the department was unable to accurately determine claimant's assets.

Accordingly, the department's decision is **AFFIRMED**. This Administrative Law Judge finds that claimant possessed in excess of \$ [REDACTED] in countable available assets on the date of application or in the alternative that the asset level was indeterminable because of the contradictory information provided to the Department.

/s/ Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Landis

Date Signed: July 1, 2010

Date Mailed: July 2, 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 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.

LYL/alc

cc:

