

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 2009-33585

Issue No.: 2010/2019

Case No.: ██████████

Load No.: ██████████

Hearing Date:

September 30, 2009

Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's requests for hearing received by the Department of Human Services ("DHS") on May 20, 2009 and July 15, 2009. After due notice, a hearing was conducted from Redford, Michigan on September 30, 2009. ██████████ and ██████████ appeared and testified. The Claimant was represented by ██████████. ██████████ and ██████████ appeared on behalf of the Department.

ISSUES

1. Whether the Department properly imposed the Divestment penalty for the months of January and February of 2009?
2. Whether the Department properly included the Claimant's VA income in calculating the Claimant's Patient Pay Amount ("PPA")?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant is a MA recipient.
2. On December 1, 2008, the Claimant received notification from the Veterans Administration (“VA”) providing that the Claimant’s awarded for Improved Pension was amended to \$1,949.00 per month. (Exhibits 4, 9)
3. In January 2009, the Claimant’s spouse paid \$4,000.00 to a non-family member care provider. (Exhibits 1, 5)
4. In February 2009, the Claimant’s spouse paid \$2,250.00 to a non-family member care provider. (Exhibits 1, 5)
5. The Claimant is in a long-term care facility.
6. The Department considered the payments a divestment and imposed a 29-day divestment penalty. (Exhibit 7)
7. On April 15, 2009, the Department included the Claimant’s full VA monthly benefit in calculating the Claimant’s deductible and determined the monthly PPA amount to be \$2,308.00. (Exhibit 7)
8. On May 20, 2009 and July 15, 2009, the Department received the Claimant’s written requests for hearing protesting both the imposition of the divestment penalty and the MA deductible calculation. (Exhibits 2, 3)
9. The Department received notification from VA that \$659.00 of the monthly VA benefits amount was for Aid and Attendance.
10. As a result, on September 21, 2009, the Department re-calculated the Claimant’s deductible amount determining the monthly PPA amount to be \$1,649.00 beginning March 1, 2009. (Exhibit 8) MAd however the distribution provisions cannot be altered or changed. (Exhibit 29)

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act. 42 USC 1397 and is administered by the Department of Human Services, formally known as the Family Independence Agency, 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”).

Divestment results in a penalty period in MA, not ineligibility. PEM 405 Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value (“FMV”). PEM 405 Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. PEM 405 When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. PEM 405 During the penalty period, MA will not pay for long-term care services. PEM 405 Transferring a resource means giving up all or partial ownership in, or rights to, a resource. PEM 405

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. PEM 105 Medicaid is also known as Medical Assistance (“MA”). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for Supplemental Security Income (“SSI”) recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* FIP- and SSI-related Group 2

eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. PEM 105 MA income eligibility exists for the calendar month tested when there is no excess income or allowable medical expenses that equal or exceed the excess income. PEM 545

VA pension payments are counted as unearned income except the portion of the payment that is for Aid and Attendance or Housebound allowance. PEM 500 The excluded amount is not counted as an asset or considered income. *Id.* The \$90.00 reduced VA payment made to certain MA recipients in Medicaid-certified long-term care facilities is countable income. *Id.*; PEM 546 VA aid/attendance and housebound allowances are included in the monthly pension amount however the portion used for this allowance is excluded as income and as an asset. PEM 500

In this case, two issues were presented thus each is addressed separately.

Divestment

The Claimant submitted copies of weekly checks made to a non-family member care provider. The Claimant's spouse who issued the checks testified the payments were for currently care. There was no evidence presented that the Department sought clarification regarding the payments, that the payments were for back pay, or that the payments were not at fair market value. Under the facts presented, it is found that divestment was not established therefore the divestment penalty should have been imposed. Accordingly, the Department's actions are not upheld.

VA Pension

In the record presented, the Department received documentation establishing that the Claimant received \$1,949.00 each month for a VA "Improved Pension." As a result, the Claimant's deductible was overstated. The Claimant contends that the full amount should have

been excluded because it was an allowance for Aid and Attendance. The record was unclear regarding whether or not the Department was aware that the monthly VA benefit, or any portion thereof, was for Aid and Attendance. In September of 2009, the Department received notification that \$659.00 of the monthly VA benefit amount was for Aid and Attendance therefore the Department re-calculated the Claimant's deductible to exclude the Aid and Attendance portion going back to March 1, 2009. Although the Department initially included the Aid and Attendance allowance portion of the Claimant's VA monthly benefit this improper inclusion was remedied in September of 2009 when the Department re-ran the budget and excluded the allowance going back to March 1, 2009. Accordingly, the Department's actions are upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, AFFIRMS in part/REVERSES in part, the Department's determinations.

Accordingly, it is ORDERED:

1. The Department's determination that a divestment occurred is REVERSED.
2. The 29-day divestment penalty is not imposed.
3. The Department shall supplement for any lost benefits (if any) the Claimant was otherwise eligible and qualified to receive.
4. The Department's MA deductible calculation from September 2009 (effective March 1, 2009) is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

2009-33585/CMM

Date Signed: 10/21/09

Date Mailed: 10/21/09

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.

CMM/jlg

cc:

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