

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: 2009-33987

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 20, 2009

Saginaw 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 October 20, 2009. Claimant did not appear to testify. Claimant's daughter, [REDACTED] appeared and testified on claimant's behalf.

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 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 April 29, 2008, claimant filed an application for Medical Assistance benefits.
- (2) The asset limit per PEM, Item 400 is \$2,000 for a group size of one person.
- (3) Claimant has three rental homes which were valued at a total of approximately \$150,000 SEV.
- (4) Claimant also has several checking and savings accounts which total \$1,935.
- (5) The department caseworker determined that claimant had in excess of \$2,000 in countable, available assets.
- (6) On May 8, 2009, the department caseworker sent claimant notice that her application was denied based upon excess assets.
- (7) On June 26, 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 (PEM) and the Program Reference Manual (PRM).

Pertinent program policy indicates:

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.

Assets Defined

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). PEM, Item 400.

Overview of Asset Policy

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but **not** for another program. Some programs do **not** count assets (see “PROGRAMS WITH NO ASSET TEST” below).

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

- . Availability
 - .. see “AVAILABLE”
 - .. see “JOINTLY OWNED ASSETS”
 - .. see “NON-SALABLE ASSETS”

Exclusions. PEM, Item 400, p. 1.

An asset is countable if it meets the availability tests and is **not** excluded. PEM, Item 400, p. 1.

You must consider the assets of each person in the asset group. See the program’s asset group policy below. PEM, Item 400, p. 1.

FIP, SDA, LIF, G2U, G2C, and AMP Only

The following types of assets are the only types considered for FIP, SDA, LIF, G2U, G2C, and AMP:

- “CASH” (which includes savings and checking accounts)
- "INVESTMENTS"
- "RETIREMENT PLANS"
- "TRUSTS." PEM, Item 400.

SSI Related MA

All types of assets are considered for SSI-related MA categories. PEM, Item 400, p. 2.

MA ASSET ELIGIBILITY

LIF, G2U, G2C, AMP and SSI-Related MA Only

Asset eligibility is required for LIF, G2U, G2C, AMP and SSI-related MA categories. PEM, Item 400, p. 3.

Note: Do not deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.

Use the special asset rules in PEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and PEM 106 for the definition of waiver patient.

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. PEM 400.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. 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.

Real property is land and objects affixed to the land such as building, trees, and fences.

Condominiums are real property. The value is the equity value. Equity value is the fair market value minus the amount legally owned in a written lien provision. To determine the value of real property and mobile homes use:

- . Deed, mortgage, purchase agreement or contract.
- . State Equalized Value (SEV) or current property tax records multiplied by 2.
- . Statement of real estate agent or financial institution.
- . Attorney or court records.
- . County records.

Liens must be filed with the Register of Deeds or other appropriate agency. PEM, Item 400, pp. 18-19. The department is also supposed to exclude up to \$6,000 of equity in income-producing real property if it produces annual countable income equal to at least 6% of the asset

group's equity and the asset. Countable income is total proceeds minus actual operating expenses. PEM, Item 400, p. 22.

Claimant's representative stated on the record that claimant has the properties up for sale and has had listing agreements since May 27, 2009. (Claimant Exhibits 1-7)

In the instant case, the facts are not at issue. The department's determination of excess assets must be upheld under the circumstances. Claimant does own three rental properties with in excess of \$100,000 SEV value combined.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant's listed assets may be counted on as accurate and it was determined that claimant had in excess of \$2,000 in accountable, available assets. The department appropriately denied claimant's application for Medical Assistance benefits under the circumstances and determined that claimant had in excess of \$2,000 in countable, available assets.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: October 30, 2009

Date Mailed: November 2, 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.

LYL/vmc

cc:

