

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED] (Deceased)
c/o [REDACTED]
Claimant

Reg. No.: 2009-35281
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 4, 2009
Macomb County DHS (12)

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 request for hearing. After due notice, a hearing was conducted from Clinton Township, Michigan on November 4, 2009. The Claimant's authorized representative, attorney [REDACTED], appeared and testified. [REDACTED] and [REDACTED] [REDACTED] appeared on behalf of the Department.

ISSUES

Whether the Department properly denied the Claimant's February 2009 Medical Assistance ("MA") application due to excess assets?

FINDINGS OF FACT

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

1. On October 14, 2008, the Claimant's spouse executed a Prepaid Funeral Agreement ("Agreement") with a funeral home for the amount of \$7,669.70. (Exhibit 1)

2. The Agreement provided for \$4,495.00 for services and \$2,995.00 for merchandise. (Exhibit 1)
3. On January 29, 2009 the letter of authorization to represent was signed for the purpose of assisting the Claimant in obtaining Medical Assistance benefits. (Exhibit 2)
4. On February 2, 2009, the funeral home requested that the Agreement be certified irrevocable. (Exhibit 1)
5. The Claimant passed away on [REDACTED].
6. On April 22, 2009, the Department certified that the Agreement as irrevocable. (Exhibit 1)
7. On July 13, 2009, a MA budget ran which included, as an asset, the Claimant's spouse's funeral contract. (Exhibit 1)
8. As a result, the Claimant was found ineligible for MA due to excess assets for the month of February 2009.
9. On July 29th and August 14, 2009, the Department received the Claimant's timely written requests for hearing.
10. On September 29, 2009, the Agreement was amended to reallocate the charges for services to charges for merchandise.

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, formally 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 Program Administrative Manual ("PAM")/Bridges Administrative

Manual (“BAM”), the Program Eligibility Manual (“PEM”)/Bridges Eligibility Manual (“BEM”), and the Program Reference Manual (“PRM”)/Bridges Policy Glossary (“BPG”).

Clients must cooperate with the local office in determining initial and ongoing eligibility to include the completion of the necessary forms. PAM 105/BAM 105 Verification means documentation or other evidence to establish the accuracy of the client’s verbal or written statements. PAM 130/BAM 130 In addition to income, assets must be considered in determining MA eligibility. PEM 400/BEM 400 Assets are cash and any other personal and/or real property. *Id.* Countable assets must be available and cannot exceed the applicable asset limit. *Id.* Available means that someone in the asset group has the legal right to use or dispose of the asset. *Id.*

A funeral plan refers to a pre-arrangement for cemetery and/or funeral goods/services and are normally established using a burial fund, purchase of burial space, prepaid funeral contract, or through life insurance funding. *Id.* Michigan law allows a person to contact and pay in advance for a funeral. PAM 805/BAM 805 A prepaid funeral contract is a contract requiring payment in advance for funeral goods or services. MCL 328.215(d); PAM 805/BAM 805 A prepaid funeral contract may be revocable or irrevocable. MCL 328.228(1); PAM 805/BAM 805 Funds in an irrevocable prepaid funeral contract are unavailable thus are not counted. *Id.* Funds in a Michigan contract (DHS-8A, Irrevocable Funeral Contract Certification) certified irrevocable are excluded. *Id.* PAM 805/BAM 805 further provides that a prepaid funeral contract must be certified irrevocable and must meet all the following:

1. The contract purchaser requests via DHS-8A that the contract be certified irrevocable.
2. The contract purchaser is the beneficiary, alive, and a FIP/SDA/MA/SSI applicant or recipient. (Note: Someone else may act as purchaser for a living beneficiary if the beneficiary’s own money is used.)

3. The department has a copy of the contract
4. The principal value is not over the allowable principal value.
5. Sections 1 and II of the DHS-8A are properly completed.
6. Ten or more business days have passed since all parties signed the contract.

For program eligibility purposes, irrevocable contract means money in the contract fund, including interest or dividends, is permanently unavailable to the purchaser/beneficiary. PAM 805/BAM 805 An irrevocable contract shall not be considered in determining eligibility of an applicant or recipient for assistance given under the social welfare act, 1939 PA 280, MCL 400.0 to 400.119b. MCL 328.229(2)

In this case, the sole issue was whether or not the spouse's prepaid funeral contract was properly included as an asset in determining eligibility. The Claimant's spouse executed a prepaid funeral contract on October 14, 2008. In February of 2009, the Claimant submitted a Medical Assistance application. Pursuant to policy, the spouse's available assets were necessary to determine the group's eligibility. The Department asserted that the spouse's prepaid funeral contract should not be excluded because the exclusion applies only to the applicant. This position is inconsistent with the basic premise that only *available* assets are included in determining eligibility. The spouse's prepaid funeral contract was clearly not available. Further, policy does not specifically state (although it may be inferred) that only the applicant's, and not the spouse's, prepaid funeral contract is excluded. The fact that the Agreement was not certified as irrevocable until April is not material in that the request for certification was made in February and all criteria was met at that time. In July, when the Department determined eligibility, the Agreement had been certified as irrevocable and the asset was not available to the group. Given the fact that the asset was not available it was improperly included in determining eligibility. Under these facts, the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department failed to act in accordance with department policy when it included the spouse's prepaid funeral contract when determining the Claimant's MA eligibility.

Accordingly, it is Ordered:

1. The Department's determination is REVERSED.
2. The Department shall re-open and recalculate the Claimant's MA eligibility in accordance with department policy.
3. The Department shall notify the Claimant/Representative in writing of the determination.
4. The Department shall supplement for any lost benefits the Claimant was otherwise eligible to receive in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 11/23/09

Date Mailed: 11/23/09

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:

