

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: 2009-6236
2007-17349
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Rehearing Date
March 10, 2009
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

REHEARING 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, an in-person hearing was held March 10, 2009. Claimant was represented by [REDACTED]

ISSUE

Did the department act in compliance with department policy when it denied the claimant's Medical Assistance (MA) application based upon a 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) Claimant filed an application for Medical Assistance benefits.

(2) On April 3, 2007, a Verification Checklist was sent to claimant, asking for all assets and income with a return date of April 16, 2007 and an interview date of April 25, 2007.

(3) The department received the Verification of Assets information and discovered that claimant had a life insurance policy listed in her name with a face value of [REDACTED] and a cash surrender value of [REDACTED].

(4) On May 17, 2007, the department caseworker sent claimant notice that her case would be closed/denied because she had excess assets.

(5) On May 29, 2007, the claimant filed a request for a hearing to contest the department's negative action.

(6) At the hearing, claimant submitted information that the insurance policy was purchased by her father.

(7) On February 11, 2008, Administrative Law Judge Landis Lain found that the Department acted in compliance with department policy when it denied claimant's Medical Assistance due to excess assets.

(8) The case was appealed to 22nd Judicial Circuit Court and remanded to the State Office of Administrative Hearings and Rules for a hearing limited to consideration of the proposed life insurance documents presented in the Court as Exhibit 1a.

(9) An In-Person remand hearing was held March 10, 2009 on order of [REDACTED]
[REDACTED]

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 (the department) administers the MA program pursuant to MCL 400.10,

et seq., and MCL 400.105; MSA 16.490(15). Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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.

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); Hirschberger v. Griggs County Social Serv., 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).

A rehearing is a de novo hearing. Department manuals provide the following policy statements and instructions for caseworkers:

ASSETS

AGENCY POLICY

FIP, SDA, LIF, SSI-Related MA, AMP

Assets must be considered in determining eligibility for FIP, SDA, LIF, SSI-related MA categories and AMP. FIP, SDA, LIF and AMP consider only the following types of assets:

- . “CASH” (which includes savings and checking accounts)
- . ‘INVESTMENTS’
- . “RETIREMENT PLANS”
- . “TRUSTS” PEM, Item 400, p. 1.

SSI Related MA

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

An asset is countable if it meets the availability tests and is not excluded. PEM Item 400, p.1. An asset converted from one from to another (example: an item sold for cash) is still an asset. PEM Item 400, p.1. For SSI-related MA categories, the asset limit is \$2,000 for an asset

group of one person. PEM Item 400, p. 4. Available means that someone in the asset group has the legal right to use or dispose of the asset. PEM Item 400, p. 5. The department policy assumes that an asset is available unless evidence shows it is not available. PEM Item 400, p. 5. 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. FIP, SDA, LIF, G2U, G2C and AMP consider only the following types of assets:

- **"CASH"** (which includes savings and checking accounts)
- **"INVESTMENTS"**
- **"RETIREMENT PLANS"**
- **"TRUSTS"** PEM, Item 400, page 1. (emphasis added)

The Group 2 Caretaker relative (G2C) asset limit is \$3,000. The Group 1 SSI related asset limit is \$2,000 PEM, Item 400, page 4. At application, claimant was the legal named owner of the policy. The department properly determined that claimant had excess assets for purpose of continued MA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department acted in compliance with department policy when it denied the claimant's Medical Assistance (MA) due to excess assets.

Accordingly, the department's action is UPHELD.

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

Date Signed: March 11, 2009

Date Mailed: March 12, 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 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.

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