

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: 201012228

Issue No: 2013

Case No:

[REDACTED]

Load No:

Hearing Date:

April 15, 2010

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 telephone hearing was conducted from Detroit, Michigan on April 15, 2010. The Claimant was present and testified. [REDACTED] ES appeared on behalf of the Department.

ISSUE

Whether the Department properly counted the Claimant's assets for calculation of Medical Assistance Program (MA-P) and State Disability Assistance (SDA) eligibility.

FINDINGS OF FACT

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

1. In January, 2009, the Department received the Claimant's application for public assistance seeking MA and SDA benefits.

2. Claimant also applied for SSI benefits. Claimant was uncertain if he had applied for RSDI benefits or if any RSDI application was still pending. Claimant testified that he has a work history.
3. The Claimant has a life insurance policy with a cash value of \$5,278.34 that was inaccessible due to a levy in place by the IRS. (Exhibit 1, p. 4).
4. The Department determined that the life insurance funds were inaccessible and opened MA-P and SDA benefits for claimant.
5. On 9/23/09, upon notice that Claimant had been denied SSI benefits due to excess assets. The Department, therefore, determined that the MA-P and SDA should not have been opened, as the life insurance policy did not meet the special policy requirements for the Department to disregard the policy. The Claimant's benefits were closed effective September 25, 2009 pursuant to BEM 271.
6. On October 5, 2009 the Department received the Claimant's Request for Hearing protesting the Department's determination of his assets.
7. Claimant testified that the IRS did not receive his 2002 income tax return. As a result the IRS levied Claimant's life insurance policy.
8. Claimant testified that the IRS recouped enough money from Claimant's previous years tax refunds to resolve the lien, but that the levy on the life insurance policy remained.
9. As a result, Claimant consulted with the Office of the Taxpayer Advocate in November of 2009 in an attempt to resolve the IRS levy. (Exhibit A).

10. Claimant was notified by letter on April 6, 2010 that the IRS levy had been resolved and the life insurance policy had been, or shortly would be, released of any liens. (Exhibit A).

#### 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 Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Reference Tables (“RFT”).

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. BEM 105, p. 1 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 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.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant women, receive MA under FIP-related categories. *Id.*

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. BEM 155 through 174 describe SSI-related categories. Financial eligibility for Group 1 exists when

countable income minus allowable expenses equals or is below certain income limits. *Id.* The income limits vary by category and are for non-medical needs such as food and shelter. *Id.*

Assets must be considered in determining MA eligibility. BEM 400, p. 1. Assets are cash and any other personal and/or real property. *Id.* Countable assets must be available and cannot exceed the applicable asset limit. BEM 400, pp. 1, 6. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 6. The Department is to assume an asset is available unless evidence shows that it is not available. BEM 400, p. 6. A life insurance policy is an asset if it can generate a cash surrender value. A policy is the policy owner's asset. BEM 400, p. 25.

The Social Security Administration's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA, or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:
  - o A totally different disabling condition than the condition SSA based its determination on, or
  - o An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

Eligibility for MA based on disability or blindness does not exist once SSA's determination is final. BEM 260, pp. 2-3.

**A. Asset Determination**

In the present case, the Department received evidence that the life insurance policy could not be cashed out due to the IRS levy. Exhibit1, p. 4. Claimant is the owner of the policy and

would have been able to cash surrender the policy but for the levy. A levy is a lien that legally limits cashing out the policy by the owner. Therefore, the life insurance policy was not legally accessible as Claimant could not dispose of it. In fact, Claimant's testimony indicates that any monies owed to the IRS were already collected; however, the lien had not been removed. If Claimant experiences a change in assets, Claimant has an obligation to report that change. However, the Department cannot count the asset before it becomes available. Furthermore, the Department cannot deny benefits for an SSI denial other than for a disability based denial (see below). The Michigan regulations and the SSA regulations regarding asset levels may be different and the Department is obligated to follow Michigan's regulations as long as they do not violate federal law.

Accordingly, based on the facts and evidence presented above, the Administrative Law Judge finds that the life insurance asset was not available and, therefore, should not have been counted in determining MA-P or SDA eligibility.

**B. Denial of SSI**

In the present case, the Claimant was denied SSI (an income based program) on a basis other than Claimant's disability. It is entirely possible for Claimant to be denied SSI for income reasons and still be disabled per RSDI. The regulations require that no further appeals be available with SSA. As Claimant was uncertain whether he still had a pending RSDI case and he testified that he had a work history, the Department would need to determine whether Claimant has appealed all disability based claims within the SSA before MA and SDA could be properly denied. Furthermore, as stated above, the Department cannot automatically deny MA and SDA based on a federal asset limit.

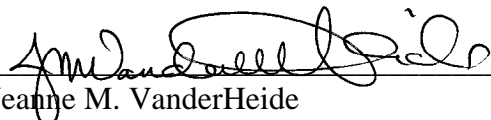
Accordingly, the Department's determination to deny MA-P and SDA is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds that there was insufficient evidence presented to affirm the Department's actions.

Accordingly, it is ORDERED:

1. The determination of the Department to terminate Claimant's MA and SDA benefits effective 9/25/09 is REVERSED.
2. The Department shall recalculate the Claimant's assets to exclude the \$5,278.34 cash surrender value of the life insurance policy in order to determine MA-P and SDA eligibility from 9/25/09 through the present.
3. The Department shall also investigate whether Claimant has any pending RSDI claims and when any said claims were denied in determining dates of eligibility.
4. The Department shall reimburse Claimant for any lost benefits he was otherwise eligible to receive program benefits in accordance with department policy.

/s/   
Jeanne M. VanderHeide  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 4, 2010

Date Mailed: May 4, 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 60 days of the filing of the original request.

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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.

JV/hw

cc:

