

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: 2010-26396
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 22, 2010
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimants' request for a hearing. After due notice, a telephone hearing was held on April 22, 2010.

ISSUE

Did the Department of Human Services (DHS) properly propose to close claimants' Medical Assistance (MA-P) on the grounds of excess assets effective May 1, 2009?

FINDINGS OF FACT

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

(1) At all relevant times prior to the proposed negative action herein, claimant and her spouse had a Group 2 Caretaker Medicaid case open and beneficiaries of the Medicaid program administered by the DHS.

(2) Un-refuted evidence on the record is that claimant wife has a 401k account in the amount [REDACTED] and claimant husband in the amount of [REDACTED].

(3) The department contacted claimant husband's employer with regard to the 401k and was informed that he could not access it unless he separated from employment.

(4) At the review in November, 2009 verification indicated that claimant husband had separated from employment on 5/7/09.

(5) On 12/7/09 the DHS issued a Notice of Case Action (DHS-1605) informing claimants that the Medicaid case open on their behalf would close on the grounds that there was no longer eligibility because the assets are more than the [REDACTED] asset limit for the period beginning on May 1, 2009. See exhibits 41-44.

(6) On 12/11/09 claimant filed a timely hearing request. The department reinstated the action pending the outcome of the hearing. Claimants continue to receive MA benefits.

(7) There is no recoupment issue here.

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).

Applicable policy and procedure to the case herein is found in BEM Item 400. This item discusses assets and the grounds under which such assets may be available and/or accounted for various welfare programs.

Applicable to the case herein, general asset policy states that if an asset is accessible and considered cash, it is countable. See BEM Item 400, pgs. 1-10. However, this item carves out exceptions as to what is counted. BEM Item 400 states that certain types of exceptions are excluded under certain circumstances, including retirement plans, which includes 401k plans are exempt under for Group 2 Caretaker MA if the following condition(s) are met:

The value of these plans is the amount of money the person can currently withdraw from the plan. Deduct any early withdraw penalty, but not the amount of any taxes due. BEM Item 400, pg. 15.

Policy states that the asset limit for a group of two applicable to the facts herein is

██████████.

In this case, the department determined that upon separation, claimant husband could cash in his 401k plan which totaled ██████████. Even paying the penalty, claimant's remainder would well exceed the ██████████ amount.

Claimant argued that he could have cashed it in while he was employed as well as when he separated from employment. However, a department error made previously will not entitle an individual to prevail where there would otherwise be no eligibility.

This Administrative Law Judge has reviewed the policy and the facts herein and determines that the department correctly applied its policy at the time it took its action in proposing to close the MA on the grounds of excess assets pursuant to a countable 401k plan upon separation.

With regards to the 5/1/09 start date, general MA policy allows for eligibility for an entire month if/when there this eligibility for any one day during the month. The record in this case reflects that claimant was eligibility until 5/7/09. Thus, he was eligible for at least 1 day in May,

2009, and thus is entitled to eligibility for all of May, 2009. Thus, this Administrative Law Judge finds that claimant should not have been found to be ineligible until 5/1/09.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department correctly determined claimant had excess assets due to the ability to access a 401k plan. The department's determination of excess was correct and hereby partially affirmed.

The department incorrectly determined the start date of claimant's ineligibility. This Administrative Law Judge finds that claimant was not ineligible until 6/1/09. On this issue the department is partially reversed. The department may close benefit eligibility effective as of 6/1/09.

It is so Ordered.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 28, 2010

Date Mailed: April 30, 2001

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.

JS/lk

cc:

