

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: 2010-30141

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 2010

Berrien 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 May 13, 2010. Claimant's [REDACTED] guardian, appeared and testified on claimant's behalf. Claimant is in a [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly determine that claimant had excess assets for purposes of Medical Assistance (MA) and retroactive MA for the months of August, September, and October 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) Claimant applied for Medical Assistance and retroactive Medical Assistance benefits on September 22, 2009, for June 2009, July 2009 and August 2009.

- (2) The claimant is in a nursing home as a patient.
- (3) On November 17, 2009, the Medical Assistance application was denied due to excess assets per the bank statement that we'll receive. (Exhibits pp. 1-12)
- (4) The client then reapplied on November 30, 2009, for Medical Assistance and retroactive Medical Assistance benefits for the months of August, September, and October 2009.
- (5) Bank statements were provided for September showing that claimant was under the asset limit and the Medical Assistance benefit case was open for September 2009 and on-going.
- (6) The bank statement form August was determined to be over the asset limit.
- (7) On November 17, 2009, the department caseworker sent claimant notice that her application for August 2009 and July 2009 was denied.
- (8) On January 19, 2010, 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).

ASSETS

DEPARTMENT POLICY

FIP, SDA, LIF, Group 2 Persons Under Age 21, Group Caretaker Relative, SSI-Related MA, and AMP **2**

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.

An asset converted from one form to another (example: an item sold for cash) is still an asset. 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.

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.

Jointly owned assets are assets that have more than one owner. An asset is unavailable if the owner cannot sell or spend his share of an asset without another owner's consent and the other owner is not in the asset group and the other owner receives his consent. BEM, Item 400, p. 41. For cash the department is to count the entire amount unless the person claims and verifies a different ownership. Then each owners share is the amount that he owns. The department is to assume that an asset is available unless the evidence shows that it is not available. An asset remains available during periods in which a guardian or conservator is being sought. Money held by others is considered to be available asset. An example is if S does not have a bank account and she puts her mother's checking account but is not a joint account. PEM, Item 400, p. 10.

In the instant case, claimant has challenged the fact that the account which is in her mother's was not totally available to her mother. Claimant testified on the record that she and her husband used her mother's shared draft account as a savings account for themselves and

had been doing so for years. Claimant's daughter indicated that claimant only had \$ [REDACTED] in countable available assets for the month of August 2009.

This Administrative Law Judge finds that the lowest balance in the account in claimant's name was \$ [REDACTED] for the month of July 2009. The lowest balance for claimant in August 2009, was \$ [REDACTED]. There was really no way to tell whether or not claimant's daughter owned half of the assets and there is no evidence beyond claimant's daughter's bald statement that claimant only had \$ [REDACTED] left in August 2009 and only had \$ [REDACTED] left in July 2009. Therefore, the department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant excess assets for purposes of Medical Assistance benefit eligibility for the month of July and August 2009. The asset was not unavailable because claimant could have spent her share of the entire assets without the owners consent.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established that necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance benefits for the months of July and August 2009, based upon its' determination that claimant had in excess of \$ [REDACTED] 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: June 28, 2010

Date Mailed: June 29, 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 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.

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