

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-36115/2010-42189

[REDACTED]
Load No.: 1321000000

Hearing Date: August 19, 2010

Calhoun County DHS (21)

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 the claimant's request for a hearing. After due notice, an In-Person hearing was held on August 19, 2010. The claimant was represented at the hearing by his wife and two daughters. Claimant deceased as of March 20, 2010. The hearings 2010-42189 and 2010-36115 are herein consolidated as they contain the same issue arising out of the same fact situation.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) based upon the fact that claimant possessed excess assets for purpose of receiving Medical Assistance Benefits?

FINDINGS OF FACT

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

- 1) On November 30, 2009, claimant filed an application for Medical Assistance benefits.
- 2) On December 9, 2009, the department caseworker sent claimant a verification checklist requesting income & asset information.
- 3) On December 30, 2010, the verification information was returned to the department.
- 4) The application was processed on January 26, 2010 and an initial asset test was done.

- 5) Based upon the verifications received by the department, the bridges computer determined that claimant had excess assets and therefore was not eligible for medical assistance.
- 6) On February 9, 2010, the department caseworker sent claimant notice that the application was denied based upon excess assets.
- 7) On March 8, 2010, claimant filed a request for a hearing to contest the department's negative action.
- 8) Claimant again applied for Medical Assistance benefits on January 26, 2010.
- 9) A second initial asset test was completed at that time with total assets of [REDACTED].
- 10) The protected spousal amount is [REDACTED]; claimant had excess assets of [REDACTED].
- 11) Claimant then re-applied for Medical Assistance benefits for her husband on February 26, 2010.
- 12) She provided proof of spending down her assets for a total of [REDACTED]. She also provided proof of her current asset value.
- 13) After updating all information, claimant was still over assets. She did not spend the minimum required amount of [REDACTED] for her husband to be eligible for MA.
- 14) On March 24, 2010, the department caseworker sent claimant another notice that her husband was not eligible to receive Medical Assistance benefits based upon the fact that he had excess assets.
- 15) On April 8, 2010, the claimant filed a second 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

ASSETS

DEPARTMENT POLICY

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

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” BEM, 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). BEM, 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. BEM, Item 400, p. 1.

An asset is countable if it meets the availability tests and is **not** excluded. BEM, Item 400, p. 1.

You must consider the assets of each person in the asset group. See the program's asset group policy below. BEM, Item 400, p. 1.

An asset converted from one form to another (example: an item sold for cash) is still an asset. BEM, 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." BEM, Item 400.

SSI Related MA

All types of assets are considered for SSI-related MA categories. BEM, 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. BEM, 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 BEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and BEM 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. BEM 400.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. BEM, Item 400, p. 4.

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see BEM 405). BEM, Item 400, p. 4.

LIF Asset Limit

LIF Only

\$3,000. BEM, Item 400, p. 4.

SSI-Related MA Asset Limit

SSI-Related MA Only

For Freedom to Work (BEM 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 (BEM 165) and QDWI (BEM 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. BEM, 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. BEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. BEM, Item 400, p. 6.

JOINTLY OWNED ASSETS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

Jointly owned assets are assets that have more than one owner.

Note: For FTW determinations, jointly owned assets are considered to belong to the initial person.

An asset is unavailable if an 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 refuses consent.

Exception: In SSI-related MA, when ownership is shared by an SSI-related child and his parent(s) **and** parental asset deeming applies, refusal to sell by either the child or the parent(s) does **not** make an asset unavailable.

Ownership documents for jointly owned real property commonly use one of four phrases:

- **Joint Tenancy:** no owner can sell unless all owners agree.
- **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.
- **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- **Tenancy-in-Common:** each owner can sell his share without the other owner's agreement. BEM, Item 400, p. 7.

INITIAL ASSET ASSESSMENT

MA Only

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse.

An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989. BEM, Item 402, pp. 5-6.

The federal law requires that an initial asset assessment be done when requested by either spouse **even when an MA application is NOT made.** BEM, Item 402, p. 6.

Notification

MA Only

Notify both spouses in writing of the results of the initial asset assessment whether it is done prior to, or at the time of, an MA application. BEM, Item 402, p. 6.

Standard of Promptness

MA Only

Complete an initial asset assessment and mail notices within 45 days. The period begins on the date the local office receives the signed DHS-4574-B.

A person who requests an initial asset assessment, without applying for MA, must be given the same assistance in completing the assessment and obtaining verification that would be provided to any client. See BAM 130 for types of verification, sources and timeliness standards. An initial asset assessment **cannot** be completed if a client or his spouse refuses to provide a verification or has **not** made a reasonable effort to obtain it within the time standards in BAM 130. BEM, Item 402, p. 7.

Do **not** deny/terminate a Group 2 Pregnant Women or Healthy Kids category if the client chooses **not** to cooperate with the initial asset assessment. BEM, Item 402, p. 7.

UNDUE HARDSHIP

SSI-Related MA Only

A client whose countable assets exceed the asset limit is nevertheless asset eligible when an undue hardship exists. Assume that denying MA will **not** cause undue hardship unless there is evidence to the contrary.

An undue hardship exists when the client's physician (M.D. or D.O.) states that:

- . necessary medical care is **not** being provided, and
- . the client needs treatment for an emergency condition.

A medical emergency is any condition for which a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency is any condition that must be immediately treated to prevent serious injury to the person or others. BEM, Item 402, pp. 8-9.

Period of Eligibility

SSI-Related MA Only

The existence of a hardship cannot be used to establish eligibility for any month prior to the processing month because there must be a current need for medical care for a current emergency condition.

However, once eligibility is established for the processing month, the client is asset eligible for the presumed asset eligible period. BEM, Item 402, p. 9.

Claimant's wife testified on the record that she felt uninformed and that she was not assisted. The nursing home told her that everything was fine but it wasn't. No one told her who her caseworker was and so she never had any information on how to become asset eligible for purposes of her husband's eligibility for medical assistance and long term care. Her husband died on March 20, 2010 and she still has outstanding long term care bills.

In the instant case, claimant had in excess of [REDACTED] in countable available assets after the initial asset test was completed. This Administrative Law Judge did look at all of the exhibits in the file and the bank statements contained therein. At the time the initial asset test was completed the total assets of claimant and his wife were [REDACTED]. The protected spousal amount was [REDACTED] the claimant had excess assets in the amount of [REDACTED]. Claimant's wife did attempt to spend down her husband's assets for a total [REDACTED]. After updating all of the information, claimant was still over assets as his wife had not spent the minimum required amount of [REDACTED] for claimant to become eligible for Medical Assistance. In addition, claimant had initial asset in the form of an annuity and after clarification from Lansing, that annuity was a countable asset. The asset total value as of the initial asset date was [REDACTED] and had initially been counted. Therefore, claimant continued to have excess assets on all three application dates. 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 had excess assets in excess of \$2,000 in available assets on the date of the application. Therefore, the department's decision must be UPHELD.

Claimant's spouse testified on the record that it is a hardship because she was not informed of what she needed to do to spend down the asset, she attempted to spend down the assets, and she does not have very many assets to live off of. She still owes medical bills for long term care for her deceased husband. Claimant has given a compelling equitable argument to be excused from department policy.

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The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

This Administrative Law Judge has no equity powers and cannot act in contravention with department policy. Claimant did not put forth hardship allegations which are allowed by policy in this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had in excess of [REDACTED] in countable available assets for purposes of Medical Assistance eligibility on the date of all three applications. The department properly denied claimant's application for Medical Assistance in these circumstances and determined 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: ____10/28/2010_____

Date Mailed: ____10/28/2010_____

