

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

IN THE MATTER OF:



Reg. No: 2010 37243
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 21, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on October 21, 2010.

ISSUE

Did the Department of Human Services (Department) properly deny Claimant's Medical Assistance (MA) application for excess assets?

FINDINGS OF FACT

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

1. On January 26, 2010, the Claimant applied for MA coverage including retro MA.
2. On February 25, 2010, denied the Claimant's application for MA for excess assets.
3. On March 4, 2010, Claimant filed a request for hearing.

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 (formerly 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Michigan provides MA for eligible clients under two general classifications: Group 1 and Group 2 MA. Claimant falls under Group 2 MA classification which consists of client's whose eligibility results from the state designating types of individuals as "medically needy." MCL 400.106; MSA 16.490 (16), MCL 400.107; MSA 16.490(17), and PEM, Item 105.

In the present case, the Claimant was denied benefits based upon the Department determining the Claimant had excess assets. The Department based this decision on the following assets: bank account, life insurance policies, and burial agreement. The Department found the Claimant had a countable amount of assets in the amount of \$7534.48 for the months of October, November, and December 2009. The Department budgets reflect approval for the month of January 2010 for MA AD-Care case.

The first issue to address is the use of the burial agreement and the life insurance policies. The Claimant submitted a funeral contract that was paid for with the assigning of life insurance policies totaling \$5000. The Department counted these insurance policies as an asset separately from the burial agreement as well as an asset in the burial agreement. The cash value of the policies in question (prior to death) is \$2511. Only considering the cash value of the actual policies, the Claimant's assets do exceed the \$2000 limit for assets for the MA program. The burial agreement fails to be irrevocable hence why the policies do need to be considered as an asset.

However, the Claimant's authorized power of attorney representative, on December 1, 2009, moved all insurance into her name. Therefore, starting December 1, 2009, the Claimant would no longer have ownership of these assets. There does not appear to be any exchange of any money or other items of value for these policies, and there is a question of divestment for the month of December 2009.

In the instant case, the Department incorrectly counted the same asset twice in its calculation of assets. However, even after correcting this error, the Claimant would still have excess assets for the months of October and November 2009. The Department failed to make a determination regarding whether the transfer of the assets, specifically the life insurance policies, constituted a divestment.

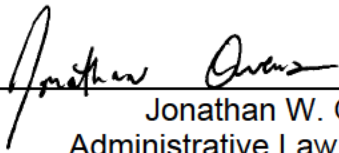
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the following:

Accordingly, the Department's decision is AFFIRMED in part and REVERSED in part as follows:

1. In regards to excess assets for the months of October and November 2009, the Department is UPHeld.
2. The Department's decision in regards to December 2009 is REVERSED. The Department will make a determination of whether the Claimant's

transfer of life insurance policies constitutes a divestment and issue a decision regarding the month of December 2009.


Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/15/10

Date Mailed: 11/15/10

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.

JWO/dj

cc:

