

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. 201038441
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 22, 2010
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, September 22, 2010. The claimant personally appeared and testified with her husband, [REDACTED], and authorized representative, [REDACTED].

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) due to excess assets?

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 January 14, 2010, the claimant filed an application for disability for her husband.
2. On February 18, 2010, a verification of assets showed a lump sum payment from Worker's Compensation of [REDACTED], and the checking account balance at [REDACTED] was [REDACTED], where there were additional checking and savings accounts, but the [REDACTED] account balance put the claimant over the \$3,000 asset limit for MA. (Department Exhibit 1-4)

3. On March 1, 2010, the department caseworker calculated the claimant's eligibility for MA and determined that the claimant was over the \$3,000 asset limit and failed the resource eligibility test. (Department Exhibit 5)
4. On March 1, 2010, the department caseworker sent the claimant a denial notice because the value of their countable assets was higher than allowed for the program of \$3,000 for a couple. (Department Exhibit 6-10)
5. On March 22, 2010, the department received a hearing request from the claimant, contesting the department's negative action.
6. During the hearing, the claimant confirmed that her husband received a Worker's Compensation check for [REDACTED], but never submitted what the money was used for and how much of it was left.
7. During the hearing, the authorized representative stated that based on the bank account information that was submitted that the claimant was over asset but that was not the lowest balance for the month in question.
8. During the hearing, the department caseworker stated that the claimant turned in the required proof, not the authorized representative and that the authorized representative never asked for a copy of what the claimant submitted or any additional time to verify assets.

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).

The department's program eligibility manuals provide the following relevant policy statements and instructions for caseworkers:

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.

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.

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.

In the instant case, the claimant's husband was hospitalized where an application was filed for him on January 14, 2010 with retroactive benefits to October 2009. Even though the claimant had an authorized representative, the claimant submitted the required verifications to the department and not to the representative. The authorized representative stated that she did not know what the claimant submitted, but it is the responsibility of the authorized representative because she is representing the claimant to know what the claimant is submitting and what would be required for the department to determine eligibility and to submit that information by the due date that the department requires or to ask for additional time if additional time is required.

The claimant's husband received a lump sum payment from Worker's Compensation. In addition, there were numerous checking and savings accounts. The department used the minimum amount which was the lump sum payment and the checking account to determine that the claimant was over the \$3,000 asset limit. However, looking at the documentation submitted, the authorized representative said that the claimant's bank account was under \$3,000 for the month in question.

The claimant's husband was subsequently determined disabled by the Medical Review Team (MRT). This Administrative Law Judge instructs the department to redetermine eligibility for the claimant to determine if the claimant's checking and saving accounts that were not counted would be over the \$3,000 asset limit. However, the department should have asked for a Verification Checklist to verify what the [REDACTED] lump sum payment from Worker's Compensation was spent on and if the claimant's bank account that they submitted was over the \$3,000 limit for the whole month in question. Once the claimant has an authorized representative, the expectation is that issues like this will be resolved by the authorized representative and the information will be provided for the department to determine eligibility.

Therefore, even though the department has established that it was acting in compliance with department policy based on the information submitted to determine that the claimant was not eligible to receive MA because of excess assets, the decision was a detriment to the claimant because the authorized representative did not make sure that the required information was submitted and that the claimant should not be penalized because the authorized representative did not perform their obligations. The claimant should have been given an opportunity to submit what the lump sum payment from Worker's Compensation was spent on and where the remaining money was and the lowest balance for the whole month in question.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately deny the claimant's application for MA because of excess assets.

Accordingly, the department's decision is **REVERSED** and the department is **ORDERED** to reprocess the claimant's January 14, 2010 MA application with retroactive benefits to October 2009 where the claimant will be given the opportunity to provide written verification of what the Worker's Compensation [REDACTED] lump payment was spent on, where the remaining money is, and the lowest balances for all the claimant's savings and checking accounts.

/s/ _____

Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: November 24, 2010

Date Mailed: November 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.

CGF / vc

cc:

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