

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: 2010-41
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 10, 2009
Lenawee 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 claimant's request for a hearing. After due notice, a three-way telephone hearing was held on Tuesday, November 10, 2009. The claimant personally appeared and testified on her own behalf.

ISSUE

Did the department properly determine that the claimant had excess assets for Medical Assistance (MA)?

FINDINGS OF FACT

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

(1) On May 29, 2009, the claimant applied for MA benefits with a retroactive MA application to February 2009. (Department Exhibit 1-16 and 23-24)

(2) The claimant receives [REDACTED] in RSDI benefits. (Department Exhibit 2)

(3) The claimant had assets of:

- From January 3, 2009 to February 20, 2009, the claimant had [REDACTED] in assets where [REDACTED] was a premium packet and [REDACTED] was a money market account. (Department Exhibit 3)
- From February 21, 2009 to March 19, 2009, the claimant had [REDACTED] in assets where [REDACTED] was a premium packet and [REDACTED] was a money market account. (Department Exhibit 4)
- From March 20, 2009 to April 20, 2009 the claimant had [REDACTED] in assets where [REDACTED] was a premium packet and [REDACTED] was a money market account.
- From April 21, 2009 to May 20, 2009 the claimant had [REDACTED] in assets where [REDACTED] was a premium packet and [REDACTED] was a money market account.

(4) The claimant is eligible to receive \$1,200 a month in alimony from her ex-husband as cited in a Circuit Court divorce decree. (Department Exhibit 13-15)

(5) On August 6, 2009, the department caseworker calculated the claimant's eligibility for benefits for the month of April 2009 and determined that the claimant had excess assets. (Department Exhibit 25-36)

(6) On August 18, 2009, the department received a hearing request from the claimant contesting the department's negative action.

(7) During the hearing, the claimant testified that her ex-husband put money directly in her checking account in the amount of \$1,200, but the claimant's ex-husband does not always pay.

(8) During the hearing, the department caseworker stated that the claimant would have to prove that she did not get the money or else the department would be required to count it. The claimant had excess assets and income for the months of February 2009, March 2009, and April 2009.

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 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" PEM, Item 400.

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 PEM 405). PEM, Item 400, p. 4.

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.

Lump Sums and Accumulated Benefits

FIP, SDA and AMP Only

Lump-sums and accumulated benefits are assets starting the month received.

A person might receive a single payment that includes both accumulated benefits and benefits intended as a payment for the current month. Treat the portion intended for the current month as income. PEM, Item 400, p. 9.

LIF, G2U, G2C, SSI-Related MA

Lump sums and accumulated benefits are income in the month received. See PEM 500 about countable income policy.

Exception: The following are assets:

- . Income tax refunds
- . Nonrecurring proceeds from the sale of assets
- . Payments that are excluded assets. PEM, Item 400, p. 10.

RETIREMENT PLANS

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

This section is about the following types of assets:

- . Individual retirement accounts (IRAs)
- . Keogh plans (also called H.R. 10 plans)
- . 401k plans
- . Deferred compensation
- . Pension plans
- . Annuities--An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. PEM, Item 400, pp. 14-15.

Michigan provides MA for eligible clients under two general classifications: Group 1 and Group 2 MA. Claimant qualifies under the Group 2 MA classification, which consists of clients whose eligibility results from the State determining certain types of individuals as medically needy. PEM, Item 105. In order to qualify for Group 2 MA, medically needy clients must have income which is equal to or less than the basic protected monthly income level.

The department's policy sets forth a method for determining the protected basic maintenance level by considering:

- (1) The protected income level,
- (2) The amount diverted to dependents,
- (3) Health insurance premiums,

- (4) Remedial services if determining eligibility for claimants in adult care homes. The protected income level is a set amount for non-medical needs such as shelter, food, and incidental expenses. In all these situations, other than those involved in long-term care, the appropriate protected income level must be taken from PRT 240. PEM, Item 545.

The Administrative Law Judge has reviewed the record and finds that the claimant had excess income for the contested time period. The Medicaid asset limit is \$2,000 and the Medical Savings Program (MSP) is \$4,000. Assets must be considered in determining eligibility for Medical Assistance. The department has to consider cash, investments, retirement plans, and trusts. PEM, Item 400. Assets mean cash, any other personal property, and real property. PEM, Item 400, p. 1. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the available test and is not excluded. PEM, Item 400, p. 1. In the instant case, there was no argument as to how much claimant had in her accounts.

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.

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

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A preponderance of the evidence on the record establishes that the claimant had countable assets in excess of \$2,000 on the date of her application. The Medical Assistance asset limit for a person in the claimant's circumstances is \$2,000. Therefore, this Administrative Law Judge must conclude that the department correctly denied the claimant's MA application due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted appropriately when it determined that the claimant's

application for MA benefits should be denied based upon the fact that the claimant had excess assets.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: December 15, 2009

Date Mailed: December 15, 2009

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/vmc

cc:

