

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: 2010-47239
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 1, 2010
Ionia 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 November 1, 2010. Claimant is in long term care. Claimant was represented at the hearing by her daughter [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) based upon its' determination that claimant possessed excess assets?

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 March 24, 2010, claimant's representative applied for Medical Assistance benefits for claimant.
- (2) A retroactive Medical Assistance application was also filed for January and February 2010.
- (3) On April 5, 2010, it was reported that claimant's deceased husband's home was sold and that the residue of his estate was \$ [REDACTED] which must be given to a trust for claimant and her deceased husband.

- (4) The Department of Human Services evaluated the Trust and determined that all assets of the Trust are countable when determining claimant's eligibility for Medical Assistance.
- (5) On May 5, 2010, the department case worker sent claimant notice that Medical Assistance benefits were denied based upon its' determination that claimant possessed in excess of \$ [REDACTED] in countable available assets.
- (6) On May 11, 2010, claimant's representative 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Assets must be considered in determining eligibility for SSI related MA categories. Assets mean 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). 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. The department must determine whether or not an asset is countable. A countable asset is available and not excluded. BEM, Item 400, p. 1.

The department must consider the assets of each person in the asset group. The asset limit for SSI related Medical Assistance which is not Medicare savings program or QDWI is \$ [REDACTED] for an asset group of one person and \$ [REDACTED] for an asset group of 2 people. BEM, Item 400, p.5.

In the instant case, the asset group in this case would be one person because claimant's husband deceased on [REDACTED]

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. The department is to assume an asset is available unless evidence shows that it is not available. An asset remains available during the periods in which a guardian or conservator is being sought. BEM, Item 400, p. 6.

The claimant is allowed an excluded asset in the form of a homestead. The department is to exclude funds received from a sale of a homestead or the land the home was on

for 12 months if there is a written agreement to purchase another homestead. The 12 month period starts the month the funds are received. The department is to use this exclusion only if the funds are not co-mingled with countable assets and are not in timed deposits. BEM, Item 400, p. 11.

In the instant case, there is a revocable living trust created to hold title to real and personal property for the benefit of claimant and her husband. A trust is defined in policy as the writer property created by one person for the benefit of himself or another. It includes any legal instrument or device that exhibits the general characteristic of a trust but is not called a trust or does not qualify the trust under state law. Examples of such devices might be annuities, escrow accounts, pension funds, and investment accounts managed by someone with fiduciary obligations. A trustee is a person who has a legal tie to the assets and income of the trust and the duty to manage the trust with the benefit of the beneficiary (BEM, item 401, p. 1).

An evaluation of a trust advises the local office on: whether a trust is revocable or irrevocable and whether any trust income or principle is available. BEM, Item 400, p. 2. In a revocable trust the department is to count as the persons countable assets the value of the countable assets and the countable income in the principle of a revocable trust. BEM, Item 401, p. 9. In the instant case, 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 in excess of \$ [REDACTED] in countable available assets based upon the fact that claimant does have a revocable trust in to which was placed [REDACTED] from the sale of a homestead. Claimant does not have a homestead or homestead proceeds exclusion. The department's case must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant possessed in excess of \$ [REDACTED] in countable available assets for purposes of Medical Assistance benefit eligibility. The department properly denied claimant's application for Medical Assistance under the circumstances and determined that claimant had a revocable trust the proceeds of which did not qualify for asset exclusion and that claimant had \$ [REDACTED] which was placed into the trust and co-mingled with other assets which would have been contained in the trust.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/
Y. Lain
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: January 18, 2011

Date Mailed: January 19, 2011

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.

LYL/alc

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