

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: 2010-49091
Issue No: 2021

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 December 2, 2010. The claimant was represented by [REDACTED] attorney. The claimant's witnesses included Francis Wiscavage, the claimant's wife and [REDACTED] the claimant's daughter.

ISSUE

Did the department properly compute the claimant's Initial Asset Assessment and determine the protected spousal amount and determine the claimant had excess assets for Medicaid?

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 November 16, 2009, the claimant applied for Medicaid. (Department Exhibit A, pages 2 – 20, 54 - 59)
2. On December 1, 2009, the department issued a Verification Checklist (DHS-3503) requiring several items, including a copy of the trust. These items were due back to the department by December 11, 2009. (Department Exhibit A, pages 21 – 22)
3. On December 11, 2009, the department denied this MA application for failure to provide required verifications. (Department Exhibit A, page 2)

4. On December 17, 2009, a department staff member had a telephone conversation with [REDACTED] and informed her that a house in trust is a countable asset. (Department Exhibit A, page 26)
5. On December 29, 2009, [REDACTED] submitted another MA application and retro MA application for her father. The department failed to register and process this application. (Department Exhibit B, pages 8 – 15)
6. On February 3, 2010, [REDACTED] submitted a third MA application and retro MA application. (Department Exhibit 31 – 39)
7. On February 3, 2010, the department received a Quitclaim Deed that stated the homestead was deeded from the trust to [REDACTED], as individuals. There is a handwritten note on the bottom of this deed that states “this removed the house out of there (sic) trust and back into their names, so it will be considered their house in the month of Dec and won’t be listed as an asset.” (Department Exhibit C, page 16)
8. On February 10, 2010, a memo was issued to the Medicaid Policy Unit that requested review of the claimant’s trust. There is a handwritten note on this memo that states “quit claim on house was also sent 2/12/10.” (Department Exhibit C, page 4)
9. An evaluation of the trust was completed by the Medicaid Policy Unit on February 22, 2010. The evaluation found the trust to be a Medicaid trust as defined in BEM 401. The memo explained that if the homestead was in the trust, it would be a countable asset. If it was transferred back to the claimant/spouse, it would be exempt property effective the month it was transferred. (Department Exhibit C, page 2)
10. On May 7, 2010, the department completed an Initial Asset Assessment (IAA) (DHS-4585). The first period of continuous care was November 18, 2009. As of this date, the department determined the claimants to have [REDACTED] in countable assets. (Department Exhibit C, pages 2 – 4)
11. On May 7, 2010, the department issued a Notice of Case Action (DHS-1605) that denied the claimant’s Medicaid application due to excess assets. (Department Exhibit E, pages 2 – 5)
12. On June 21, 2010, the department received a hearing request from the claimant.

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).

Department policy states:

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.

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.

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.

HOMES AND REAL PROPERTY EXCLUSIONS

Homestead Definition and Exclusion

SSI-Related MA Only

A homestead is where a person lives (unless "**Absent from Homestead**") that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude the asset group's homestead. BEM, Item 400, p. 18.

SPECIAL MA ASSET RULES

DEPARTMENT POLICY

MA Only

Unless the "**SPECIAL EXCEPTION POLICY**" below applies, an initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse. Do an initial asset assessment when one is requested by either spouse, even when an MA application is **not** made. See "**DEFINITIONS**" and "**INITIAL ASSET ASSESSMENT.**"

SSI-Related MA Only

Use this item to determine asset eligibility for **each** continuous period of care (see "**DEFINITIONS**" below) that began on or after 9-30-89 when an L/H or waiver client:

- has a community spouse (see below), **and**
- a presumed asset eligible period has **not** yet been established, **or**
- if established, the presumed asset eligible period has **not** ended. See "**Presumed Asset Eligible Period.**"

Use BEM 400 to determine asset eligibility for clients who do **not** meet the above conditions. BEM, Item 402, p. 1.

Initial Eligibility Formula

SSI-Related MA

The formula for asset eligibility is:

- The value of the couple's (his, her, their) countable assets for the month being tested
- MINUS the "protected spousal amount" (see below)
- **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in BEM 400 for the category(ies) being tested. BEM, Item 402, p. 3.

Exception: The client is asset eligible when his countable assets exceed the asset limit if denying MA would cause undue hardship. See "**UNDUE HARDSHIP.**" Assume that denying MA will **not** cause undue hardship unless there is evidence to the contrary. BEM, Item 402, p. 3.

Presumed Asset Eligible Period

SSI-Related MA Only

Applicants eligible for the **processing month** and recipients eligible for the first future month are automatically asset eligible for up to 12 calendar months regardless of:

- changes in their community spouse's assets, or
- the number of MA applications or eligibility determinations that occur during the period.

The 12-month period begins with the month following the processing month and is called the presumed asset eligible period.

Exception: The 12-month period ends sooner if:

- the continuous period of care ends, or
- the client's spouse no longer meets the definition of a community spouse, or
- the client's spouse dies or the couple divorces.

NOTE: Do **not** extend the original 12-month period when

the client becomes eligible for additional MA benefits (e.g., QMB benefits were effective 8-1-91; Group 2 coverage began 10-1-91). BEM, Item 402, p. 4.

Community Spouse Resource Allowance

SSI-Related MA Only

Federal law requires that the client and community spouse be told how much the "community spouse resource allowance" is and how it was calculated. Do this only when an applicant is MA eligible for the processing month or a recipient's eligibility continues.

Exception: Do **not** compute the allowance, notify the client or community spouse of the allowance or send the asset transfer notice when the "**SPECIAL EXCEPTION POLICY**" above applies.

The allowance is:

- the "PROTECTED SPOUSAL AMOUNT" (see below)
- **MINUS** the value of the community spouse's current countable assets

NOTE: Do **not** count cash value assets owned jointly by the client and community spouse in this calculation.

- **EQUALS** the community spouse resource allowance.

However, the value of assets fluctuates constantly. Therefore, what the couple really needs to know is: when the rules in PEM 402 no longer apply, the client's countable assets must **not** exceed the appropriate asset limit (e.g., [REDACTED] for the AD-Care category). All of the above information is in the Asset Transfer Notice. BEM, Item 402, p. 5.

Notification

SSI-Related MA Only

Notify both the client and community spouse in writing of the above information:

- at the time an applicant is notified that he is eligible for the **processing** month or a recipient continues eligible for MA, and
- when requested by the client, the community spouse or the representative of either spouse. BEM, Item 402, p. 5.

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.

PROTECTED SPOUSAL AMOUNT

MA Only

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the **greatest** of the amounts in 1-4 below.

1. \$21912 effective January 1, 2010 and \$21912 effective January 1, 2009.
2. One-half the initial asset assessment amount (see "**INITIAL ASSET ASSESSMENT**"), but **not** more than [REDACTED] effective January 1, 2010 and [REDACTED] effective January 1, 2009.
3. The amount determined in a hearing per BAM 600.
4. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:
 - .. pay support to the community spouse, and
 - .. transfer assets to the community spouse for the support of the community spouse or a family member. Family member is defined under "FAMILY ALLOWANCE" in BEM 546. BEM, Item 402, pp. 7 and 8.

The department completed an initial asset assessment (IAA) (DHS-4585) on May 7, 2010. 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 402. The first day of the first period of **continuous** care was November 18, 2009. The department found the claimant to have [REDACTED] in countable assets.

Department policy indicates that a homestead will be excluded as an asset in most circumstances. BEM 400. However, if the homestead is in a Medicaid Trust, the homestead becomes a countable asset. BEM 401. Department staff members testified that they had not received any information to show the homestead was in trust, so it was excluded as a countable asset for the IAA.

However, it appears that the department did have information showing the homestead had been in the trust. On February 3, 2010, the department received a Quitclaim Deed that stated the homestead was deeded from the trust to Mr. and Mrs. Wiscavage, as individuals. There is a handwritten note on the bottom of this deed that states "this removed the house out of there trust and back into their names, so it will be considered their house in the month of Dec and won't be listed as an asset." On February 10, 2010, a memo was issued to the Medicaid Policy Unit that requested review of the claimant's trust. There is a handwritten note on this memo that states "quit claim on house was also sent 2/12/10." When the Medicaid Policy Unit evaluated the trust, the memo specifically explained that if the homestead was in the trust, it would be a

countable asset. If it was transferred back to the claimant/spouse, it would be exempt property effective the month it was transferred.

The quitclaim deed shows the homestead was transferred out of the trust and back to the claimant/spouse on December 23, 2009. Thus, the homestead was a countable asset until December, 2009, when it became an excluded asset. The IAA first day of the first period of continuous care is November 18, 2009. Thus, the department should have included the homestead as a countable asset when the IAA was completed.

It is also noted that the department failed to register and process the application dated December 29, 2009. The department did not process this application, but instead had the client's daughter submit a new MA and retro MA application in February, 2010. The retro MA application would have gone back to November, 2009, which is the month Mr. Wiscavage entered LTC. However, from the Notice of Case Action (DHS-1605) issued on May 7, 2010, it does not appear that the department addressed the retro MA application. Thus, the department must recompute the IAA and determine the claimant's MA eligibility back to November, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly computed the claimant's Initial Asset Assessment and determined the protected spousal amount.

Accordingly, the department's determination is REVERSED. The department shall issue a new IAA determining the protected spousal amount in accordance with this decision and redetermine the claimant's Medicaid eligibility back to November, 2009.

SO ORDERED.

_____/s/_____
Suzanne L. Morris
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 2/16/11

Date Mailed: 2/17/11

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.

[REDACTED]