

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: 2010-51069
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 27, 2010
Ottawa County DHS (70)

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 October 27, 2010. Claimant is in a Nursing Home and did not appear. Claimant's Attorney [REDACTED] appeared on his behalf.

ISSUE

Did the Department of Human Services (the department) properly determine that the proceeds from the sale of claimant's homestead were countable assets for the Medical Assistance (MA) Program?

FINDINGS OF FACT

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

- (1) Claimant is in a Nursing Home and receives Medical Assistance.
- (2) A review application was filed April 22, 2010, and the department received information that claimant's homestead was sold effective March 15, 2010.
- (3) Contract sales price on the home was \$ [REDACTED] and the seller, claimant, received \$ [REDACTED] (Department Exhibits # 5 & 7).
- (4) On June 18, 2010, the department sent claimant notice stating that his Medical Assistance benefits would be cancelled effective April 1, 2010, as his assets were more than the \$ [REDACTED] asset limit.

- (5) On August 9, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) Claimant's Attorney submitted a document titled an Agreement Regarding Disposition of Homestead Sales Proceeds, which was received by the Department of Human Services on March 25, 2010.
- (7) The agreement specifies that "this agreement is made as of March 18, 2010, [REDACTED] as agent and Attorney in fact of [REDACTED] [REDACTED] as agent and attorney in fact for [REDACTED] and [REDACTED] as custodian of homestead sale proceeds, agree as follows:
 1. The net proceeds for the sale of the real property commonly known as [REDACTED] (the homestead sale proceeds) will be used to purchase a replacement homestead for [REDACTED]
 2. The homestead sale proceeds shall be maintained in a separate account at the [REDACTED]
 3. The [REDACTED] account shall not be a timed deposit account.
 4. The homestead sale proceeds shall not be co-mingled with countable assets.
 5. The replacement homestead shall be purchased within 12 months of receipt of the funds from the homestead sale.
 6. This agreement is given pursuant to BRIDGES Eligibility Manual 400, p. 11, which provides in part: use as exclusion only if the funds are not co-mingled with countable assets or are not in timed deposits. Exclude funds received from a saleable 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." (Exhibit 10)

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).

Assets must be considered in determining eligibility for SSI related Medical Assistance categories. Assets mean cash, any other personal property and real property. Real property is land and objects that are fixed to the land such as buildings, trees and fences. BEM, Item 400, p1. For all other SSI related Medicaid categories, decides that

Medicare Savings Program and QDWI, the asset limit is \$ [REDACTED] for an asset group of 1 or \$ [REDACTED] for an asset group of 2. BEM, Item 400, p. 5. 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.

Applicable departmental policy states that in order for an individual to receive a homestead sales exclusion, the funds from the sale of a homestead cannot be co-mingled with countable assets and are not to be placed in timed deposits. If these requirements are satisfied, funds received from the sale of a homestead are excluded for 12 months, if there is a written agreement to purchase another homestead. BEM, Item 400, p. 11. The 12 month period starts the month the funds are received.

Black's Law Dictionary, defines an agreement as a coming together of minds; a coming together in opinion or determination; coming together in accordance of 2 minds in a given proposition. In Law, a concord of understanding and intention between 2 or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The consent of 2 or more persons concurring respecting the transmission of some property, right or benefits, with the view of contracting obligation, a mutual obligation. The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or minds in a thing done or to be done; a mutual ascent to do a thing. A compact between parties who are there by subjected to the obligation or to whom the contemplated right is there by secured.

Claimant's representative argues that such an agreement is in effect and that the terms of the agreement satisfy the requirements of the department policy.

This Administrative Law Judge finds that the agreement regarding disposition of homestead sales proceeds is simply a statement of intent by [REDACTED] as to what the requirements of policy are. However, there is no information contained in the file as to whether or not the homestead sales proceeds were maintained in a separate in a separate account at the [REDACTED]. Claimant's attorney did not provide account information to this Administrative Law Judge, nor with an account number as to where the check for \$ [REDACTED] was deposited once it was paid to claimant. There is no evidence contained in the record as to whether or not the sales proceeds were co-mingled with countable assets. There is no information contained in the file that there is any agreement signed between two or more parties for the sale of a homestead or a homestead to be purchased by claimant or by claimant's agent within 12 months from the date of sale of the homestead. In addition, claimant's representative provided a case register number 2006-18647 determined and decided by Administrative Law Judge Ivona Rairigh which indicates that on July 11, 2006, a policy clarification was received by the local county stating that the claimant would have to have an agreement pending to purchase a specific home and if there was no agreement pending to purchase a specific home, that the department was to consider the cash payment as a countable asset and deny/close the case.

This Administrative Law Judge does not necessarily interpret departmental policy to include a definitive statement that claimant must have a written agreement to purchase a specific home. However, the commonly accepted meaning of agreement means that there must be at least two minds involved. In the instant case, the purported agreement which was submitted as exhibit number 10 was an agreement made [redacted] and [redacted] both serving in allegedly different capacities to claimant. Claimant is entitled to a notice of what the requirements of departmental policy are and the departmental clarification of a policy interpretation through a policy clarification does not give due process notice to a claimant. However, claimant has not established by preponderance of the evidence that the sales proceeds were maintained in a separate account at the [redacted] as there are no account numbers provided and no account statements provided to this Administrative Law Judge. In addition, this Administrative Law Judge has no evidence that the [redacted] account was not a timed deposit account. This Administrative Law Judge further has no information that the homestead sales proceeds are not currently co-mingled with other countable assets.

This Administrative Law Judge finds that the assets total value of \$ [redacted] is a countable available asset for purposes of the application in question. 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 has excess assets in excess of \$ [redacted] in countable available assets on the date of application. Therefore, the department's decision 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 eligibility on the date of application in question. The department properly denied claimant's application for Medical Assistance in these circumstances and based upon the information contained in the record and determined that claimant had an excess of \$ [redacted] in countable available assets.

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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