

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 20108610
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: June 16, 2010
Van Buren 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, a telephone hearing was held on Wednesday, June 16, 2010. The claimant is deceased, but was represented by her son, [REDACTED], boyfriend, [REDACTED] and the claimant's authorized representative, [REDACTED].

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA) based on the fact that the claimant had 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 June 11, 2009, the claimant applied for MA. (Department Exhibit 1-2)
2. On June 25, 2009, the department caseworker sent a Verification Checklist, DHS-3503, to obtain the required information to determine MA eligibility. (Department Exhibit 3)
3. On July 2, 2009, the department received the required verifications. (Department Exhibit 4-8)
4. On October 19, 2009 the department caseworker received information that the claimant had been approved for RSDI retroactive to July 2009.

5. On October 20, 2009, the department caseworker denied the claimant's MA application due to excess assets for a life insurance policy with a cash surrender value of [REDACTED] which was over the \$2,000 asset limit for MA. (Department Exhibit 6-7)
6. On October 20, 2009, the department caseworker sent the claimant a notice that she had excess assets for MA.
7. On November 3, 2009, the claimant's son filed a hearing request, contesting the department's negative action.
8. During the hearing, the department stated that the claimant's caseworker was on medical leave, which was why the application had not been processed until October 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 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.

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). PEM, 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. 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.

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.

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- . \$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.

LIFE INSURANCE

SSI-Related MA

A **life insurance policy** is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. Pure Endowment Life Insurance Contracts pay out on a specific date in the future

not just when the beneficiary dies, and does not meet the definition of life Insurance for Medicaid. PEM, Item 400, p. 23.

Life Insurance Definitions

SSI-Related MA

Cash surrender value (CSV) - the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value or the cash value. PEM, Item 400, p. 24.

Face value (FV) - the amount of the basic death benefit contracted for at the time the policy is purchased. It might be titled the face value, face amount, amount of insurance, amount of policy or sum insured. It does **not** include dividends or additional amounts payable because of accidental death or other special circumstances. PEM, Item 400, p. 24.

Insured - the person whose life the policy insures. PEM, Item 400, p. 24.

Insurer - the company that contracts with the policy owner. PEM, Item 400, p. 24.

Policy owner - the person who has the right to change the policy. This is usually the person who pays the premiums. The policy owner and the insured can be different people. PEM, Item 400, p. 24.

Life Insurance Value

SSI-Related MA

A life insurance policy is an asset if it can generate a CSV. A policy is the policy owner's asset.

- . A policy's value is its CSV. A policy can generate a CSV, but have a CSV of zero. Such a policy is an asset with zero value.
- . Generally, term insurance does **not** have a CSV. Whole or straight life policies generate a CSV.

- . The CSV usually increases over time. A loan against a policy reduces its CSV. Pre-death payment of the death benefit might reduce the CSV. See "**Accelerated Life Insurance Payments**" in PEM 500 about the payments received.
- . CSV and FV are **not** the same thing. PEM, Item 400, p. 24.

LIFE INSURANCE EXCLUSIONS

General SSI-Related MA Life Insurance Exclusion

SSI-Related MA Only

Look at each policy owner's life insurance separately.

Exclude the entire cash surrender value when the total **face values** of all policies a policy owner has for the **same insured** are \$1,500 or less. PEM, Item 400, p. 25.

Exceptions: Do **not** count the face value of:

- . Term insurance that does **not** generate a CSV.
- . Burial insurance. Burial insurance is an insurance policy whose terms prevent the use of its proceeds for anything other than payment of the insured's burial expenses. A policy is **not** burial insurance if the policy has a CSV the owner can access. A policy used for "**Life Insurance Funded Funerals**" below is **not** burial insurance. Michigan does not have burial insurance, but a person from another state could have such insurance.
- . Endowment policies. An **Endowment policy** is a policy which enables the insured to accumulate a sum of money payable to him at a date named in the policy (the maturity date). The policy says whether the money is paid over time or all at once. The policy matures on the maturity date. A matured endowment policy is **not** life insurance. PEM, Item 400, p. 25.

Assets mean cash, any other personal property, and real property. BEM, Item 400. Countable assets cannot exceed applicable asset limits. An asset is countable if it meets the availability test and is not excluded. BEM, Item 400. In the instant case, there

was no argument as to how much the claimant's cash surrender value of her life insurance of [REDACTED].

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

The claimant applied on July 11, 2009, but due to department error with a department caseworker being on medical leave, the application was not processed until October 19, 2009. The application was not processed timely according to department policy, but the claimant did have excess assets. She could have bought a funeral contract with the cash surrender value of the life insurance policy, which may have made her eligible for MA. However, the MA asset and income policy are available of the internet and at the local office. The department is not allowed to give legal advice in how to qualify for MA.

UNDUE HARDSHIP

Waive the penalty if it creates undue hardship. Assume there is no undue hardship unless you have evidence to the contrary.

Undue hardship exists when the client's physician (M.D. or D.O.) says:

- Necessary medical care is **not** being provided, and
- The client needs treatment for an emergency condition.

A medical emergency exists when a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency exists when immediate treatment is required to prevent serious injury to the person or others.

See PEM 100, Policy Exception Request Procedure.

EXCEPTIONS TO OFFICIAL POLICY FIP, SDA, CDC, MA, AMP, FAP, and RAP Only

Official DHS policy is primarily the policy contained in the manuals, numbered bulletins and numbered DHS L-letters (local office Letters).

However, such policy releases **cannot** handle every conceivable situation. Therefore, policy exception decisions for specific problem areas may be issued on form DHS-1785 or DCH-1785, Policy Decision, by either of the following:

- The Department of Community Health (DCH) central office for MA and AMP.
- The Bureau for Adult and Family Services, Income Support Services, in the DHS central office for all other programs.

Policy issued on the DHS/DCH-1785 is official policy, but only for the case specified on the form.

There are three situations for which policy exceptions may be approved and issued on the policy decision form by the DHS and/or DCH central offices:

- There is no existing policy in manuals, numbered bulletins or numbered letters that applies in a specific case.
- A policy exception is needed for use in a specific case due to a new legal decision or a new law or regulation which is not yet official DHS policy.
- **FIP, SDA, CDC, MA, AMP and RAP Programs Only.** A policy exception is needed based on unique and rare circumstances in a specific case to avoid extreme and unusual hardship on the client.

Note: For some programs, central office must determine whether the Federal Financial Participation (FFP) will be affected. When FFP cannot be claimed, DHS/DCH central office must notify their central office accounting and the DHS local office. PEM 100, pp. 7-8.

The department should have considered the claimant for the Policy Exception Request Procedure based on the fact that the application was not processed timely, the claimant was approved for RSDI retroactive to July 2009, and the claimant died from cancer on [REDACTED]. Therefore, the department has not establishing that it was acting in compliance with department policy by determining that the claimant was not eligible for MA.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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 the claimant's application for MA benefits should be denied based upon the fact that the claimant possessed excess assets.

Accordingly, the department's decision is **REVERSED**. The department is ordered to consider the claimant for MA under the Policy Exception Request Procedure.

/s/

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

Date Signed: July 30, 2010

Date Mailed: July 30, 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.

20108610/CGF

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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