

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

IN THE MATTER OF THE CLAIM OF:



Reg. No.: 2010-16769
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 9, 2010
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Robert Chavez

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 September 9, 2010.

ISSUE

Was the claimant's Medicaid application properly denied for excess assets?

FINDINGS OF FACT

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

1. Claimant was a Medicaid recipient in Macomb County.
2. Claimant owns a piece of real property in his native country of India.
3. This piece of real property is valued in excess of \$100,000.
4. This real property was titled solely in the name of the claimant, prior to his death on January 13, 2010.
5. Upon his death, this property was transferred, in accordance with the relevant and prevailing laws of India, to the joint ownership of claimant's wife, surviving son, and surviving daughter.
6. Claimant has been a resident of the United States since 1994.
7. Claimant has been a naturalized citizen of the United States since 2007.

8. Claimant pays taxes in Michigan.
9. Claimant votes in Michigan.
10. Claimant holds a United States passport.
11. On December 11, 2009, claimant received a notice of case action showing that his Medicaid benefits would be placed into closure because the value of his countable assets were higher than the asset limit for the Medicaid program in question.
12. On December 17, 2009, claimant signed a statement indicating that he considered the property in India to be his “established and principal home”.
13. Claimant further stated that he intended to “return to my home in India and I do, in fact, go there to live for periods of three months or more every few years”.
14. This statement was signed with the intent of having this property in India declared an exempt asset.
15. Claimant’s case was not reinstated; DHS notified the claimant that, by his own statements, he was only temporarily residing in Michigan, and was therefore, ineligible for MA benefits.
16. On December 19, 2009, claimant requested a hearing.
17. Claimant was represented by [REDACTED] of [REDACTED]
[REDACTED]

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 Bridges Reference Manual (BRM) and Reference Tables (RFT).

With regard to the Medicaid eligibility determination, the State of Michigan has set guidelines for assets, which determine if the Medicaid group is eligible. An asset is cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Personal property is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles). BEM 400.

Under most normal circumstances, a property owner may only claim one homestead as an excluded asset. In order to claim a homestead as an excluded asset, the owner of the property must normally live in that homestead. However, a piece of real property becomes an excluded asset as a homestead, if the owner formerly lived there and if any of the following are true: A) the owner intends to return to the homestead; B) the owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged, or; C) a co-owner of the homestead uses the property as his home. BEM 400.

Countable assets cannot exceed the applicable asset limit; however, not all assets are countable. The asset limit for the program in question was \$3000. Countable assets are based on SSI-related MA policy and FIP related Medicaid policy contained in the Bridges Eligibility Manual. BEM 400.

With regards to residency requirements, an individual must be a resident of the State of Michigan in order to be eligible for benefits from any program. BEM 220. For the purposes of the Medicaid program, an individual is a Michigan resident if they live in Michigan, except for a temporary absence, and intend to remain in Michigan permanently or indefinitely. An individual can also be considered a Michigan resident if they or a member of their MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment. BEM 220.

In the current case, there is no dispute as to the value of the property in question or the ownership of the property at the time of the negative action. Instead, the case currently before the Administrative Law Judge revolves around whether the claimant's property in India was properly counted as an asset, and, if it should have been counted as a homestead, whether this places claimant in violation of the residence rules for the Medicaid program. Furthermore, there is no dispute that the claimant was not in an LTC or AFC homestead at the time of the action; additionally, there was no co-owner of the home. Claimant's Exhibit 5 shows that the claimant was the sole owner of the home at the time of the negative action.

Thus, our only question is whether the claimant "intended to return to the homestead", as contemplated by BEM 400. After much consideration, the undersigned rules that the vast weight of the evidence shows that the claimant had no intention of returning to this homestead, despite his statements to the contrary.

The phrase “intends to return to the homestead” implies, by a plain reading of the clause, an immediate desire or an ultimate goal, that is only being thwarted by current circumstances. Indeed, Black’s Law Dictionary 7th Edition, defines “intend” thusly:

intend, vb. 1. To have in mind a fixed purpose to reach a desired objective; to have as one’s purpose.

By the claimant’s own evidence, the undersigned sees very little evidence to show that the claimant had a fixed purpose to reach a desired objective of returning to this alleged homestead. Claimant immigrated to the United States in 1994. Claimant has been a legal resident of this country for the intervening 16 years, culminating with his naturalization into full citizenship in 2007. While this is admirable and remarkable, it is not evidence of claimant’s intent to return to his home country.

Furthermore, claimant set up a life here; he held a United States passport, voted in the United States, held a job in the United States, and had immediate family in the United States.

Claimant’s wife, in an affidavit dated March 18, 2010 (Claimant’s Exhibit 4), stated that the property in question was not her home, and not her primary residence. Claimant’s wife further stated that she hoped that this property would be the home of a family member. There were no indications of an intention by claimant’s wife to return permanently to this home. While the undersigned admits that this is only a statement of claimant’s wife’s intentions, the undersigned feels that, when added to the evidence as a whole, this statement provides some weight into the feelings of the claimant, especially when considering the length of time claimant lived in this country, and the affirmative actions he took—including naturalization—to remain here.

Indeed, there is no real evidence, outside of claimant’s own statement, that claimant actually had a fixed purpose to reach the desired objective of returning to this home in India. Instead, every action taken since arriving in the United States some 16 years ago has instead appeared towards placing permanent roots in this country.

While the claimant did occasionally return to this piece of property for a few months every few years, the undersigned cannot take this as evidence of intent to return permanently to the country of India—many people own, and occasionally visit, additional properties located in other states or countries, without the intention of residing there permanently.

Therefore, the undersigned cannot rationally hold that there is evidence that the claimant intended to return to this homestead, when all evidence indicates that he did not.

However, even if the undersigned accepted claimant's statement at face value, claimant would not retain eligibility for the MA program. In order to be eligible for MA benefits, an MA recipient must be intending to remain in Michigan permanently or indefinitely. BEM 220. The undersigned has heard no argument that could possibly juxtapose and rationalize this requirement with the claimant's statement of his intent to return to his homestead in India.

If the claimant had a fixed purpose to reach the desired goal of returning home to India, the claimant could not have had a fixed purpose to reach the desired goal to remain in Michigan. The plain definition of the word "intend" makes the two requirements mutually exclusive. Thus, by taking the claimant's statement at face value that he intended to return to his India homestead, the claimant would immediately fail the residency requirement mandated by BEM 220, because claimant would have no intention of remaining in the State of Michigan permanently or indefinitely.

This argument is however, mostly academic. The evidence of record does not show that claimant intended, in the plain meaning of the word, to return to his Indian homestead. Claimant has been a resident of the United States for 16 years, and placed the roots of community and family here. Claimant's intention to remain in this country permanently was shown by his own actions and deeds. Therefore, claimant does not meet the requirements of BEM 400, and therefore, cannot claim the property in question as an exempt asset. Therefore, the actions of the Department in counting this piece of property as an asset were correct. Claimant's assets thus exceeded the asset limit for the Medicaid program in question, and the negative action imposed by the Department was correct.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department was correct when it determined claimant assets exceeded the asset limits for the Medicaid program.

Accordingly, the Department's decision in the above stated matter is, hereby, **AFFIRMED**.



Robert Chavez
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

201016769/RC

Date Signed: 2/10/2011

Date Mailed: 2/10/2011

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.

RC/jlg

cc:

