

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No.: 2010-177
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 5, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on April 5, 2010. The Claimant was represented by his attorney [REDACTED].

ISSUE

Did the Department properly deny the Claimant's MA and retroactive MA applications?

FINDINGS OF FACT

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

1. On June 6, 2007, the Department denied the Claimant's MA and retro MA applications finding that his assets were above the \$2,000.00 limit.
2. On September 17, 2007, the Claimant, through his AR filed for a hearing.

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 (formerly known as the Family Independence Agency) 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 relies on PEM 400 which says in part:

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 400, pp. 4-5)

In the instant case, the Claimant owned a home valued in excess of the above asset limit. The record shows that the asset was the Claimant's home before he became ill and went to live with his sister.

Absent from Homestead

SSI-Related MA Only

Exclude a homestead that an owner formerly lived in if **any** of the following are true:

The owner intends to return to the homestead.

The owner is in an LTC facility, a hospital, an adult foster care (AFC) home or a home for the aged.

A co-owner of the homestead uses the property as his home. (PEM 400, p.21).

Here, the claimant left her homestead due to illness and maintained a life estate in the property. The department decided that the home was an asset when the claimant transferred the home to a trust. The department cites PEM 401.

Countable Assets

The following are countable assets.

Assets that are countable using SSI-related MA policy in PEM 400. Do not consider an asset unavailable because it is owned by the trust rather than the person.

The homestead of an L/H or waiver patient or the patient's spouse even if the home was transferred before the patient was institutionalized or approved for the waiver. (PEM 401, p. 9)

These two sections of policy appear to be in conflict. The ownership of property does not change the nature of that property when the trust delegates a life estate to the principle.

DECISION AND ORDER

The Administrative Law Judge based on the above findings of fact and conclusions of law, REVERSES AND ORDERS the department to accept the home at [REDACTED], [REDACTED], as the claimant's homestead and decide the claimant's eligibility accordingly.



Michael J. Bennane
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 6/8/2010

Date Mailed: 6/8/2010

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.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

MJB/jlg

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