

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: 2010-32125
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2010
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, a telephone hearing was held on July 29, 2010.

ISSUE

Is a remedy available to claimant where the department failed to act on his MA application for nine months when claimant would not otherwise be eligible?

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 March 17, 2009, claimant applied for MA for himself, his spouse, and their children.
- (2) Claimant's children were subsequently approved and opened MA. This eligibility and these cases are not at issue herein.

(3) Claimant and his spouse were not eligible for the same MA category as their children. The department indicated the only MA category for claimant and his spouse would be Group II caretaker relative.

(4) The asset group for Group II MA caretaker relative for claimant and his spouse is \$3,000.

(5) Unrefuted evidence on the record is that claimant's assets include an IRA, some stocks, bonds, and/or mutual funds which exceed the \$3,000 asset limit for claimant and his spouse.

(6) There is no dispute in this case regarding the calculation of the asset.

(7) The department stipulated at the administrative hearing that it incorrectly represented to claimant verbally that he and his spouse were eligible for MA and that there was a "glitch" in the processing due to a computer issue. Claimant was informed on June 24, 2010, that he was eligible for MA and awaited paperwork. The department stipulated that "there were considerable delays on the agency's part in processing the eligibility determination." Claimant filed complaints in Lansing and at the local office.

(8) The DHS failed to act on this case until nine months after application--December 14, 2009. The DHS issued a denial notice due to excess assets.

(9) Claimant that due to his reliance on his expected MA eligibility covering his numerous medical bills that he may lose his house in foreclosure, is no longer eligible to remortgage due to medical bills, and that a number of bill collectors pursuing claimant.

(10) At no time--from application date until the denial date nine months later--did claimant have any eligibility on the grounds that he had excess assets.

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).

Asset eligibility is found primarily in BEM Item 400--Assets. This policy indicates that if an asset is accessible as cash or considered to be cash under DHS policy and procedure, then it is countable for MA.

Cash assets include investments in retirement plans. BEM Item 400, page 1.

The asset limit for caretaker relative is \$3,000. BEM Item 400, page 4.

Claimant has stocks and bonds as well as IRA. These assets are discussed in BEM Item 400, pages 14 and 15. For an IRA, policy requires the department to count the cash value after the penalty would be paid. In this case, the penalty would be 10%. Reducing the IRA by 10% would not trigger eligibility as the assets in this case would still exceed \$3,000.

Claimant's presentation that he cannot remortgage due to his extraordinary medical bills now and may lose his house to foreclosure was credible.

Claimant essentially asks this ALJ to reverse the department and grant eligibility on a theory of detrimental reliance. Administrative law judges have no such equitable powers both in administrative law and under welfare law. Where an employee is incompetent or fails to perform/process cases as required under policy and procedure, an ALJ cannot find eligibility where there would not otherwise be eligibility.

Nor do administrative law judges have authority to review the conduct of an employee:

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. [REDACTED],

[REDACTED]).

MAC R 400.903 states: A complaint as to allege misconduct or mistreatment by a State employee shall not be considered through the administrative hearing process thus shall be referred to the department personnel director. MAC R 400.903.

The purview of the Administrative Law Judge is to make a determination if the department's actions were correct under policy and procedure. As they are correct in this case, this ALJ must uphold the department's actions.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department's actions were correct.

Accordingly, this ALJ must uphold the department's actions herein. There is no remedy where claimant would not otherwise be eligible.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 9, 2010

Date Mailed: August 10, 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.

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.

JGS/tg

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