

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: 201033541

Issue No: 2021

[REDACTED]

ADMINISTRATIVE LAW JUDGE: **Kandra Robbins**

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. This matter was originally assigned to [REDACTED]. [REDACTED] is no longer employed by the State Office of Administrative Hearings and Rules. This matter was reassigned to [REDACTED] to complete the decision after complete review of the record. Claimant's request for a hearing was received on February 23, 2010. After due notice, a telephone hearing was held on July 27, 2010. The Claimant's authorized representative; Douglas McPhail was present and testified.

ISSUE

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) and retroactive Medicaid assistance?

FINDINGS OF FACT

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

1. The Claimant submitted an application for Medicaid and Retroactive Medicaid benefits for September 2009.
2. The Department sent the Claimant a Notice of Case Action on December 4, 2009 denying his MA application because of excess assets. (Department Exhibit A pg 1-2).
3. On January 20, 2010, the Claimant amended the Standard Life Insurance Annuity by changing the beneficiary. (Department Exhibit A pg 16-17).

4. On February 9, 2010, the Department received the Claimant's Request for Hearing protesting the Department's determination of his MA application.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-951.

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1). An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2)

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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). Department Policy states:

BEM 105 DEPARTMENT POLICY MA Only

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

SSI-RELATED AND FIP-RELATED

The Medicaid program is comprised of several sub-programs or categories. One category is FIP recipients. Another category is SSI recipients. There are several other categories for persons not receiving FIP or SSI. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. Therefore, these categories are referred to as either FIP-related or SSI related. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and

pregnant, or recently pregnant, women receive MA under FIP-related categories.

MONTHLY DETERMINATIONS

MA-only eligibility is determined on a calendar month basis. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise.

CHOICE OF CATEGORY

Persons may qualify under more than one MA category. Federal law gives them the right to the most beneficial category. The most beneficial category is the one that results in eligibility or the least amount of excess income.

BUDGETS

Determine income eligibility and post-eligibility patient-pay amounts (PPA) on a calendar month basis. Use one budget to determine income eligibility (or post-eligibility PPA) for multiple months if the circumstances for each of the months are identical. Document budget computations. MA worksheets and LOA2 are available. See BEM 549.

Applicants and Deductible Cases

Determine income eligibility in calendar month order beginning with the oldest month. This is especially important when determining eligibility for a pregnant woman or using medical expenses to determine Group 2 income eligibility.

BEM 400 DEPARTMENT

POLICY FIP, SDA, RAPC, 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, RAPC, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA

categories and AMP. FIP, SDA, RAPC, LIF, G2U, G2C and AMP consider only the following types of assets:

- Cash (which includes savings and checking accounts).
- Investments.
- Retirement Plans.
- Trusts.

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).

Overview of Asset Policy

FIP asset rules apply to RAPC

Countable assets **cannot** exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but not for another program. Some programs do **not** count assets.

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.

Use the special asset rules in BEM 402 for certain married L/H and waiver patients. See BPG Glossary, for the definition of L/H patient and BEM 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.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date.

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending

negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients will be penalized for divestment

**SSI-Related MA
Asset Limit**

SSI-Related MA Only

For Freedom to Work (BEM 174) the asset limit is [REDACTED]. IRS recognized retirement accounts (including IRA'S and 401(k)'s) may be of unlimited value.

For Medicare Savings Programs (BEM 165) and QDWI (BEM 169) the asset limit is:

- [REDACTED] for an asset group of one.
- [REDACTED] for an asset group of two.

For all other SSI-related MA categories, the asset limit is:

- [REDACTED] for an asset group of one.
- [REDACTED] for an asset group of two.

**BEM 401 TRANSFERS TO AN ANNUITY EFFECTIVE
9/1/05**

Converting countable resources to income through the purchase of an annuity or the amendment of an existing annuity on or after 09/01/05, is considered a transfer for less than fair market value unless the annuity meets the conditions listed below:

- Is commercially issued by a company licensed in the United States and issued by a licensed producer, (a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance), and
- Is irrevocable, and
- Is purchased by an applicant or recipient for Medicaid or their spouse and solely for the benefit of the applicant or recipient or their spouse, and
- Is actuarially sound and returns the principal and interest within the annuitant's life expectancy, and

- Payments must be in substantially equal monthly payments (starting with the first payment) and continue for the term of the payout (no balloon or lump sum payments).
- An annuity purchased or amended **on or after February 8, 2006** must name the State of Michigan as the remainder beneficiary or as the second remainder beneficiary after the community spouse or minor or disabled child, for an amount at least equal to the amount of the Medicaid benefits provided. The naming of the State in the first or second position must be verified at application or redetermination.

The Claimant submitted an application for MA and Retro-MA in October 2009. On October 28, 2009, the Department received written notice that [REDACTED] was designated by the application as his authorized representative. The Authorized Representative submitted an Asset Declaration as part of the application as required. The Asset Declaration included an Annuity issue by Standard Life Insurance with a payout to begin on April 6, 2008 and a final payment December 6, 2010. (Department Exhibit pgs 3-8). At the time of the MA application, the Annuity did not list the State of Michigan as a remainder beneficiary. Therefore, the Department counted the Annuity as a countable asset pursuant to policy. BEM 401. Any Annuity purchased after February 2006 is required to name the State of Michigan as the remainder beneficiary. The Department calculated the Claimant's countable resources to be [REDACTED] as a result of real property, personal property, cash, stocks, and annuity. The Claimant's spouse has a protected amount of [REDACTED]. Department policy indicates that an applicant for SSI-related MA is restricted to assets of [REDACTED] BEM 400. Based on the Claimant's assets, he exceeds the asset limit authorized by policy. The Claimant was sent the Notice of Action indicating that his assets exceeded the limit. The Department acknowledges that the Notice of Action was not sent to the Authorized Representative. The Authorized Representative claims that had the Department sent a Verification Checklist to him, he would have been able to provide documentation to satisfy the Department regarding the Claimant's assets. He testified that the Annuity was amended in January 2010 to add the State of Michigan as the remainder beneficiary. (Department Exhibit A pgs 16-17). The Claimant was not denied MA and Retro MA for his October 2009 application for failure to provide verification of assets. The Claimant's October 2009 application was denied because the Claimant's assets exceeded the limit. The Department did not need additional information to verify the Claimant's assets. Therefore, there was no reason to send a Verification Checklist. Although the Claimant was able to subsequently amend the Annuity in a manner that permitted it to be excluded as an asset for a MA application submitted in January 2010 and approved in March 2010, the Department was required to determine the Claimant's assets at application for the October 2009 application. The Department is required to deny MA if the Claimant exceeds that asset limit **at application**. There is no

provision in the policy for the Department to provide the Claimant with an opportunity to divest himself of assets that exceed the asset limit unless he was already receiving MA assistance. BEM 400. The fact that the Claimant's authorized representative did not receive the Notice of Case action does not change the assets that the Claimant had at the time of the October 2009 application.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings and conclusion of law, decides that the Department properly determined the Claimant's eligibility for the MA program.

It is so ORDERED.

_____/s/_____
Kandra Robbins
On behalf of Jana Bachman
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 2/15/11

Date Mailed: 2/15/11

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.

[REDACTED]