

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:

[REDACTED]

Reg. No.: 201038385
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 21, 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 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 21, 2010. The claimant appeared and testified. The Claimant was represented by her daughter and Authorized Representative, [REDACTED]

ISSUE

Did the Department properly deny the Claimant's Medical Assistance (MA) due to excess assets?

FINDINGS OF FACT

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

1. On May 13, 2009, the claimant applied for MA.
2. On May 13, 2009, the claimant had multiple life insurance policies with a total cash value of \$4,221.00.
3. On July 27, 2009, the claimant filed a second application for MA after the department had denied the first application.
4. On August 5, 2009, the department denied the claimant's second application.

5. On October 27, 2009, the Claimant filed a request for a hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Department relies on BEM 400 which says in part:

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 Programs (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. (BEM 400, p.5).

In the instant case, the Claimant had multiple life insurance policies with a total cash value of \$4,221.00. The claimant's assets therefore exceeded the allowable limit of \$4,000.00. However, claimant's AR testified that she was unable to access the funds available in the insurance policies.

The claimant never filed for retroactive MA because the department never advised the claimant's AR of its availability.

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.

Persons may receive both Medicare Savings Program benefits (BEM 165) and coverage under another MA category. See "Medicare Savings Program" below.

However, clients are not expected to know such things as:

The eligibility for a FIP grant does not mean MA coverage must end,

The LIF category is usually the most beneficial category for families because families who become ineligible for LIF may qualify for TMA or Special N/Support,

The Healthy Kids categories are usually the next most beneficial categories for persons under age 19 and pregnant women, and

The most beneficial category may change when a client's circumstances change.

Therefore, you must consider all the MA category options in order for the client's right of choice to be meaningful. (BEM 105, p. 2)

This ALJ finds that the department erred by not advising the claimant's AR of her ability to also file an application for retroactive MA.

The claimant's AR should gather evidence that she attempted to access the cash value of the claimant's life insurance because, if she can show that the funds were not available, policy would dictate that those funds not be counted as an asset.

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. (BEM 400, p. 6)

This ALJ sympathizes with the claimant in the above situation but there is nothing that can be done at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, AFFIRMS the Department's decision.



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

Date Signed: 7/26/2010

Date Mailed: 7/26/2010

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 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.

MJB/jlg

cc:

