

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: 201043189

Issue No: 2021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 2010

Alpena County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on April 13, 2010. After due notice, a telephone hearing was held on Thursday, October 21, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Medical Assistance (MA) and State Disability Assistance (SDA) eligibility?

FINDINGS OF FACT

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

1. The Claimant submitted a MA and SDA application on January 11, 2010.
2. The Claimant owns an annuity with a value of [REDACTED] Department Exhibit 5.
3. The trustee for the Claimant's annuity sent her a memorandum on January 25, 2009, which states that the annuity does not have an accessible cash value. Claimant Exhibit A.
4. On April 5, 2010, the Department denied the Claimant's MA and SDA application for excess assets. Department Exhibit 3.
5. The Department received the Claimant's request for a hearing on April 13, 2010, protesting the denial of her MA and SDA applications.

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 (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 Reference Table Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (Department) administers the SDA program pursuant to MCL 400.10, et seq., and MACR 400.3151-400.3180. Agency policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Table Manual (RFT).

Assets must be considered in determining eligibility for Supplemental Security Income (SSI) related Medical Assistance (MA) and State Disability Assistance (SDA). BEM 400. A trust is a right of property created by one person for the benefit of himself or another. BEM 401. An asset must be available to be countable, which means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400. The cash surrender value of a trust is the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. BEM 400.

The asset limit for SDA eligibility is \$ [REDACTED] BEM 400. The asset limit for SSI related MA with a group of two is \$ [REDACTED] BEM 400.

The Claimant submitted a MA and SDA application on January 11, 2010. On March 25, 2010, the Department determined that an annuity that the Claimant had purchased on July 11, 2006, has a cash surrender value, which is an available countable asset of \$ [REDACTED]. The Department then denied the Claimant's MA and SDA applications because the asset limit for each of these programs is \$ [REDACTED].

The Claimant argued that the Department improperly determined that her trust has a cash surrender value or that she has the right to use or dispose of the asset. The Claimant submitted a memorandum from the annuity trustee dated January 25, 2009, which states that the Claimant, as the annuitant, has the right to change the trust beneficiaries and her address, but that she does not have the right to accelerate, defer, assign, or change the payments in any manner, nor does the annuity have an accessible cash value.

Based on the evidence and testimony available during the hearing, the Department has failed to establish that it properly denied the Claimant's MA and SDA application for excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not established that it properly denied the Claimant's application for MA and SDA benefit due to excess assets.

Accordingly, the Department's MA and SDA eligibility determination are REVERSED. It is further ORDERED that the Department shall:

1. Initiate a determination of whether the Claimant's trust has an accessible cash value, and if it does, what the amount of the accessible cash value.
2. Provide the Claimant with written notification of the Department's revised eligibility determination.
3. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

_____/s/

Kevin

Scully
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: January 12, 2011

Date Mailed: January 12, 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 60 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.

KS/alc

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