

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201045887
Issue No: 2010
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2010
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on November 18, 2010.

ISSUE

Was divestment established for transfer of assets to an "exception B" Pooled Trust?

FINDINGS OF FACT

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

- (1) Negative case action: MA application on February 16, 2010 was temporarily denied March 10, 2010 based on resource transfer period of ineligibility from January 1, 2010 through January 27, 2011 based on divestment into an "exception B" Pooled Trust per BEM 401, page 6 and BEM 260.
- (2) The claimant, 93, resides in a nursing home.
- (3) The DHS claims the trust does not meet the guidelines for an exception B Trust; that BEM 401, page 6, requires that the person must be disabled according to BEM 260, which specifies that an individual must also be under the age of 65.
- (4) The claimant claims BEM 260 makes no mention of age under 65 as a requirement.

- (5) Both parties stipulated and agreed that if the policy is interpreted in favor of the DHS, then, the case action was correct. If not, then, the policy is interpreted in favor of the claimant with MA approval and no ineligibility resource transfer period.

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).

Facts above are undisputed.

The pertinent federal legal base for BEM 401, Page 14, is 1917 (d) (e) of the Social Security Act.

A pooled trust is a trust that can be established for a disabled individual under the authority of section 1917 (d) (4) (c) of the Social Security Act.

Only trusts established for disabled individuals age 64 or younger are exempt from application of the transfer of assets penalty provisions. Section 1917 (c) (2) (B) (iv) of the Act.

This ALJ has read the DHS policy Items 260 and 401 and its federal legal base and finds the “under 65” element applies.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that divestment was established for transfer of assets to an “Exception B” Pooled Trust.

Accordingly, MA approval with an ineligibility asset transfer period **UPHELD**.

/s/

William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 9, 2010

Date Mailed: December 9, 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.

WAS [REDACTED]

cc: [REDACTED]