

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. 201048626
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 20, 2010
St. Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, October 20, 2010. The claimant was not present, but was represented by her attorney, [REDACTED].

ISSUE

Did the department properly determine that the claimant had excess assets for Medical Assistance (MA) benefits?

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 September 17, 2009, the claimant applied for MA with a retroactive application for June 2009 for long-term care.
2. The claimant's attorney listed the following income:
 - The claimant receives Social Security benefits RSDI income in the amount of [REDACTED] per month. (Department Exhibit 14)
 - The claimant received the cash surrender value of her life insurance policy on August 27, 2009 of [REDACTED]. (Department Exhibit 61-65)

3. The claimant's attorney listed the following assets:
 - A savings account with a balance of [REDACTED] on [REDACTED]. (Department Exhibit 21)
 - A savings account with a balance of [REDACTED] on [REDACTED] in a savings account. (Department Exhibit 21 and 33)
 - A funeral contract of a CD of [REDACTED]. (Department Exhibit 60 and 21)
 - A burial plot valued at [REDACTED]. (Department Exhibit 56-60)
4. On November 25, 2009, the department caseworker sent the claimant a notice that her MA was denied from June 2009 on because of excess assets. The value of the claimant's countable assets was higher than allowed for this program of a \$2,000 asset limit. (Department Exhibit 26-10)
5. On December 7, 2009, the department received a hearing request from claimant, contesting the department's negative action.
6. During the hearing, the claimant's attorney conceded on the record that the claimant had excess assets for June 2009, July 2009, and August 2009, but the claimant's attorney stated that for September 2009 forward that the claimant should have been eligible for MA.
7. On November 4, 2010, the claimant's attorney sent a statement that showed on the date of application filed on September 17, 2009 that the claimant had [REDACTED] in the bank making her under the \$2,000 asset ceiling to be eligible for Medicaid.

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).

The department's program eligibility manuals provide the following relevant policy statement and instructions for caseworkers:

ASSETS

DEPARTMENT POLICY

FIP, SDA, 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, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA categories and AMP.

- . “CASH” (which includes savings and checking accounts)
- . “INVESTMENTS”
- . “RETIREMENT PLANS”
- . “TRUSTS” BEM, Item 400.

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). BEM, Item 400.

Overview of Asset Policy

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 (see “PROGRAMS WITH NO ASSET TEST” below).

You must consider the following to determine whether, and how much of, an asset is countable.

- . Availability
 - .. see “AVAILABLE”
 - .. see “JOINTLY OWNED ASSETS”
 - .. see “NON-SALABLE ASSETS”

Exclusions. BEM, Item 400, p. 1.

An asset is countable if it meets the availability tests and is **not** excluded. BEM, Item 400, p. 1.

SSI Related MA

All types of assets are considered for SSI-related MA categories. BEM, Item 400, p. 2.

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. BEM, Item 400, p. 3.

Note: Do not deny or terminate TMA-Plus, Healthy Kids or Group 2 Pregnant Women because of a refusal to provide asset information or asset verification requested for purposes of determining LIF, G2U, G2C or SSI-related MA eligibility.

Use the special asset rules in BEM 402 for certain married L/H and waiver patients. See PRG, 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. BEM 400.

SSI-Related MA Asset Limit

SSI-Related MA Only

For Freedom to Work (BEM 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 Program (BEM 165) and QDWI (BEM 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, Item 400, p. 4.

AVAILABLE

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

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, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. BEM, Item 400, p. 6.

CASH

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This section is about the following types of assets:

- . Money/currency
- . Uncashed checks, drafts and warrants
- . Checking and draft accounts
- . Savings and share accounts
- . Money market accounts
- . LTC patient trust fund
- . Money held by others--**Example:** Sally does **not** have a bank account. She puts money in her mother's checking account, but it is **not** a joint account.
- . Time deposits--A **time deposit** is a contract between a person and a financial institution whereby the person agrees to leave funds on deposit for a specified period in return for a specified interest rate. Common time deposits are certificates of deposit (CDs) and savings certificates. BEM, Item 400, p. 9.

Lump Sums and Accumulated Benefits

FIP, SDA and AMP Only

Lump-sums and accumulated benefits are assets starting the month received.

A person might receive a single payment that includes both accumulated benefits and benefits intended as a payment for the current month. Treat the portion intended for the current month as income. BEM, Item 400, p. 9.

Excluded Income under BEM 500

FIP, SDA, LIF, SSI-Related MA and AMP

Use this exclusion only if the funds are **not** commingled with countable assets and are **not** in time deposits.

BEM 500 identifies certain sources of funds that are excluded as both income and assets. Time limits and other conditions applicable to the income exclusion also apply to the asset exclusion. BEM, Item 400, p. 12.

Current Income Exclusion

FIP, SDA, LIF, SSI-Related MA and AMP

Do not count funds treated as income by a program as an asset for the same month for the same program.

When income must be prorated or averaged (example: self-employment) exclude the resulting assets for the months of proration. BEM, Item 400, p. 12.

FUNERAL PLANS

SSI-Related MA Only

Funeral plan refers to the prearrangement for cemetery and/or funeral goods and services. Normally, the plan is established using one or more of the following:

- . Burial fund
- . Purchase of burial space
- . Prepaid funeral contract
- . Life insurance funding. BEM, Item 400, p. 26.

Burial Fund Exclusion

SSI-Related MA Only

A limited amount of certain types of assets a person has clearly designated to pay for burial expenses are excluded as a burial fund. See below about:

- . Types of Assets
- . Burial Expenses
- . Clearly Designated
- . Not Commingled
- . Amount Excluded
- . Misuse of Fund. BEM, Item 400, p. 26.

Types of Assets. Assets under the following headings in this item can be a burial fund.

- . "CASH"
- . "INVESTMENTS"
- . "LIFE INSURANCE"
- . "Prepaid Funeral Contract"

Other types of assets (example: real property, vehicles, livestock) may **not** be a burial fund. BEM, Item 400, p. 26.

Burial Expenses. Expenses that qualify for the burial fund exclusion are generally those related to preparing a body for burial and any services prior to burial. Examples are:

- . Services of funeral director and staff
- . Transportation of the body
- . Embalming
- . Cremation
- . Clothing
- . Cost of guest registry book
- . Cost of obituary
- . Flowers **not** displayed at grave-site
- . Cleric's honorarium if no services at grave-site
- . Burial space items that do **not** meet the "held for" test. BEM, Item 400, pp. 26-27.

Clearly Designated. The asset must be clearly designated. The designation can be on the asset (example: title on a bank account, prepaid funeral contract) or on a signed statement from the client. The designation must include the following information:

- . Value and owner of the asset
- . Whose burial the fund is for
- . Date the funds were set aside for the person's burial
- . Form in which the asset is held (example: bank account, life insurance). BEM, Item 400, p. 25.

Not Commingled. Burial funds may **not** be commingled with any assets except excluded burial space assets (see "SSI-Related MA Burial Space Exclusion" below.) BEM, Item 400, p. 27.

Amount Excluded. Exclude up to \$1,500 for each qualified fiscal group member and/or spouse. In addition, exclude accumulated interest and dividends. BEM, Item 400, p. 26.

Reduce the \$1,500 per person maximum by the following:

- . The face value of excluded life insurance policies (including term insurance) when the person is the insured and:
 - .. if an adult, the policy is owned by the person or the person's spouse; or
 - .. if a child, the policy is owned by the child, the child's parent or the parent's spouse.
- . The principal amount (**not** accumulated interest or dividends) held in an irrevocable prepaid funeral contract for the person's burial expenses (see above). Do **not** count the identifiable cost of burial space assets (see "**Burial Space Defined**" below.)
- . The cost of burial expenses (see above) identifiable in a life insurance funded funeral plan that was irrevocably transferred (see "**Life Insurance Funded Funeral**" and "**Life Insurance Irrevocably Transferred**" below.)
- . The face value of burial insurance on the person. See "**LIFE INSURANCE**" above for the definition of burial insurance.

Count only the original principal amount and any additions to the principal to determine if the maximum limit has been

reached. Do **not** count accumulated interest and dividends. BEM, Item 400, p. 22.

Prepaid Funeral Contract

SSI-Related MA and AMP

A prepaid funeral contract means a contract requiring payment in advance for funeral goods or services. Contracts may be revocable or irrevocable. BEM, Item 400, p. 29.

Revocable Prepaid Funeral Contract Exclusions and Value

SSI-Related MA and AMP

Funds in a revocable prepaid funeral contract might be excludable using the "**Burial Fund Exclusion**" and/or the "**SSI-Related MA Burial Space Exclusion**" above.

The countable amount of the contract is the amount remaining on deposit after:

- . those exclusions, and
- . any commission or fees that would be charged upon withdrawal. BEM, Item 400, p. 30.

Irrevocable Prepaid Funeral Contracts

LIF, G2U, G2C, SSI-Related MA and AMP

Funds in an **irrevocable** prepaid funeral contract are unavailable and thus are **not** counted. BEM, Item 400, p. 29.

Funds in a Michigan contract (DHS-8A, Irrevocable Funeral Contract Certification) certified irrevocable are excluded. BEM, Item 400, p. 30.

In the instant case, the claimant through her verification provided a statement for September 2009 that showed the balance in her account of September 4, 2009 in the amount of [REDACTED], which would make her over the \$2,000 asset limit. The claimant's attorney, after the hearing, submitted a bank statement that showed that the claimant's lowest ending balance for the month of September 2009 was [REDACTED], which may make the claimant eligible for MA for the month of September 2009. However, this information was not provided to the department. According to the record, the claimant

has a funeral contract in the amount of [REDACTED]. A copy of the prepaid funeral contract was not submitted for the Administrative Law Judge's review to determine whether or not it was a countable asset.

Therefore, the department has established by the necessary, competent, material, and substantial evidence that it acted in compliance with department policy when it determined that the claimant had excess assets for the month of September 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was acting in compliance with department policy when it determined that the claimant had excess assets for the month of September 2009 forward, but was missing the lowest monthly balance when determining eligibility for MA benefits.

Accordingly, the department's decision is **REVERSED** and the department is Ordered to determine the claimant's eligibility for MA for September 2009 forward through a redetermination of eligibility from September 2009 with the claimant's checking account and prepaid funeral contract.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 27, 2010

Date Mailed: December 27, 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.

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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.

CGF / vc

cc:

