

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. 201048851
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 21, 2010
Clinton 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 Thursday, October 21, 2010. The claimant is deceased, but was represented by his wife, [REDACTED], the claimant's daughter, [REDACTED], and the claimant's son-in-law, [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 March 27, 2009, the claimant applied for MA for long-term care.
2. On March 27, 2009, the department caseworker sent the claimant a verification checklist to determine eligibility for MA with a due date of April 7, 2009. (Department Exhibit 28)
3. On March 27, 2009, the department received an asset declaration that was signed by the claimant's wife stating that the claimant's wife had [REDACTED] in a checking account, a joint checking account of [REDACTED], claimant's wife had life insurance of [REDACTED], claimant's life insurance [REDACTED], claimant and his wife's burial plot valued at [REDACTED], undeveloped

real estate valued at [REDACTED], and the claimant's wife's savings account of [REDACTED], and that they had two cars. (Department Exhibit 1-2)

4. Both parties stipulated that the claimant's required information to determine eligibility was provided by the due date that the department required which was April 7, 2009.
5. On [REDACTED], the claimant died. (Department Exhibit 132)
6. Even though the department had the required information to determine eligibility on March 27, 2009, the department caseworker did not determine eligibility until March 13, 2010.
7. Both parties stipulated that the amount of the assets or the assets are not in question, but what is in question is the lack of timeliness and standard or promptness that the department used when determining eligibility for benefits that was done almost a year after the application was filed.
8. On March 13, 2010, the department caseworker did an initial asset assessment for the claimant to determine eligibility for MA (Department Exhibit 101):
 - The couple had total countable assets of [REDACTED].
 - One half of the claimant's countable assets were [REDACTED].
 - The claimant's countable assets were [REDACTED].
 - The claimant's spouse's countable assets were [REDACTED].
 - The claimant's protected spousal amount is [REDACTED]. There was no community spouse resource allowance given.
9. On March 13, 2010, the department caseworker sent the claimant a notice that the protected spousal amount was [REDACTED] that his spouse could keep and that the claimant was allowed to keep \$2,000 in assets while on Medicaid. The amount protected for the claimant's spouse is on half of the initial asset assessment amount, but not less than [REDACTED] or more than [REDACTED] and the claimant was put into long-term care on January 28, 2009. (Department Exhibit 99-100)
10. On March 15, 2010, the department caseworker calculated the claimant's asset eligibility for MA benefits (Department Exhibit 104):
 - The claimant had a vehicle valued at [REDACTED]. The claimant had liquid assets of [REDACTED]. The claimant had a life insurance policy with a cash surrender value of [REDACTED] for a total asset amount of [REDACTED].
 - The claimant had a spousal protected resource amount of [REDACTED].

- The claimant's total countable resource amount was [REDACTED] which was over the asset limit of \$2,000 as a result the claimant's resource eligibility result was fail.
10. On March 15, 2010, the department caseworker sent the claimant a notice that based on his March 27, 2009 application that the claimant had excess assets and was denied for MA. (Department Exhibit 134)
 11. On June 8, 2010, the department received a hearing request from the claimant's wife, contesting the department's negative action.

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 statements 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.

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.

At **application**, do not authorize MA for future months if the person has excess assets on the processing date. BEM, Item 400, p. 4.

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.

LIFE INSURANCE

SSI-Related MA

A **life insurance policy** is a contract between the policy owner and the company that provides the insurance. The company agrees to pay money to a designated beneficiary upon the death of the insured. Pure Endowment Life Insurance Contracts pay out on a specific date in the future not just when the beneficiary dies, and does not meet the definition of life Insurance for Medicaid. BEM, Item 400, p. 23.

Life Insurance Definitions

SSI-Related MA

Cash surrender value (CSV) - the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies. It may be titled the cash surrender value or the cash value. BEM, Item 400, p. 24.

Face value (FV) - the amount of the basic death benefit contracted for at the time the policy is purchased. It might be titled the face value, face amount, amount of insurance, amount of policy or sum insured. It does **not** include dividends or additional amounts payable because of

accidental death or other special circumstances. BEM, Item 400, p. 24.

Insured - the person whose life the policy insures. BEM, Item 400, p. 24.

Insurer - the company that contracts with the policy owner. BEM, Item 400, p. 24.

Policy owner - the person who has the right to change the policy. This is usually the person who pays the premiums. The policy owner and the insured can be different people. BEM, Item 400, p. 24.

Life Insurance Value

SSI-Related MA

A life insurance policy is an asset if it can generate a CSV. A policy is the policy owner's asset.

- . A policy's value is its CSV. A policy can generate a CSV, but have a CSV of zero. Such a policy is an asset with zero value.
- . Generally, term insurance does **not** have a CSV. Whole or straight life policies generate a CSV.
- . The CSV usually increases over time. A loan against a policy reduces its CSV. Pre-death payment of the death benefit might reduce the CSV. See "**Accelerated Life Insurance Payments**" in BEM 500 about the payments received.
- . CSV and FV are **not** the same thing. BEM, Item 400, p. 24.

LIFE INSURANCE EXCLUSIONS

General SSI-Related MA Life Insurance Exclusion

SSI-Related MA Only

Look at each policy owner's life insurance separately.

Exclude the entire cash surrender value when the total **face values** of all policies a policy owner has for the **same insured** are \$1,500 or less. BEM, Item 400, p. 25.

Exceptions: Do **not** count the face value of:

- . Term insurance that does **not** generate a CSV.
- . Burial insurance. Burial insurance is an insurance policy whose terms prevent the use of its proceeds for anything other than payment of the insured's burial expenses. A policy is **not** burial insurance if the policy has a CSV the owner can access. A policy used for "**Life Insurance Funded Funerals**" below is **not** burial insurance. Michigan does not have burial insurance, but a person from another state could have such insurance.
- . Endowment policies. An **Endowment policy** is a policy which enables the insured to accumulate a sum of money payable to him at a date named in the policy (the maturity date). The policy says whether the money is paid over time or all at once. The policy matures on the maturity date. A matured endowment policy is **not** life insurance. BEM, Item 400, p. 25.

A preponderance of the evidence on the record establishes that claimant had countable available assets in excess of \$3,000 on the date of his application. The MA asset limit for a person in the claimant's circumstances is \$3,000. Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's MA application due to excess assets.

The claimant's application was filed on March 27, 2009. The department had the required information that showed that the claimant was clearly excess assets based on checking accounts, savings accounts, and cash surrender value of the claimant's life insurance on March 27, 2009. The department did not process the application until March 15, 2010. The claimant died on [REDACTED]. The claimant's wife, his daughter, and his son-in-law called the county office repeatedly asking that the application be processed and if there was missing information holding up the application. The department does have a record number of applications and cases with the downturn in the economy and not enough staff to complete the work.

However, the department's policy for eligibility is available to claimants applying for MA benefits that clearly states that MA eligibility is based on a \$3,000 asset limit for a group size of 2 with a 5-year required look back period. Even though, the department was required to process the application based on their policy within 45 days standard of

promptness, which the department clearly did not do, the required information is available to claimants, lay persons and attorneys regarding the requirements for MA eligibility.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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's MA application should be denied based upon the fact that the claimant possessed excess assets.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: December 29, 2010

Date Mailed: December 29, 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:

