

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: 2010-49483

Issue No: 2021

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 4, 2010. Claimant representative [REDACTED], personally appeared and testified. Claimant's daughter [REDACTED] also appeared and testified on claimant's behalf.

ISSUE

Did the department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-M) based upon its determination that claimant had excess assets?

FINDINGS OF FACT

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

- (1) On June 25, 2009, claimant's daughter [REDACTED] submitted a medical assistance application on claimant's behalf. Claimant is in a long-term care.
- (2) On May 26, 2010, the application was denied due to excess assets.
- (3) The application eligibility notice was sent to claimant on May 26, 2010.
- (4) The asset determined to be over the asset limit is a certificate of deposit No. 1009224060202194 with Bank of America valued at [REDACTED]
- (5) On June 16, 2010, claimant representative filed a request for a hearing to contest the department's negative action.

- (6) On June 23, 2010, at the pre-hearing conference, the attorney for claimant stated that the bank statement listed claimant's name first as the names are in alphabetical order but that the primary owner of the account was claimant's daughter and that claimant was not the primary owner of the account.

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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Assets must be considered in determining eligibility or SSI related categories. Assets mean cash, any other personal property and real property. (BEM, Item 400 Page 1). 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. (BEM Item 400, Page 1). The department is to consider both of the following to determine whether and how much of an asset is countable: An asset is countable if it meets the availability test and is not excluded. The department is to consider the assets of each person in the asset group. (BEM, Item 400, Page 1). Asset eligibility exists when the asset groups countable assets are less than or equal to the applicable asset limit at least one day during the month being tested. (BEM, Item 400, Page 4). An application does not authorize MA for future months if the person has excess assets on the processing date. The SSI related MA asset limit for SSI related MA categories that are not medicare savings program or QDWI is [REDACTED] for an asset group for one person and [REDACTED] for an asset group of 2 people. BEM, Item 400 Page 5. An asset must be available to be counted. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM, Item 400, Page 6. The department is to assume an asset is available unless the evidence shows that it is not available. Availability might be affected by joint ownerships and efforts to sell or the possibility of domestic violence. BEM, Item 400, Page 6. Jointly owned assets are assets that have more than one owner. An asset is unavailable if an owner cannot sell or spend his share of an asset:

- without another owner's consent,
- the other owner is not in the asset group,
- the other owner refuses to consent.

BEM, Item 400, Page 7. In joint cash assets the department is to count the entire amount unless the person claims and verifies the different ownership. Then each owner shares the amount he owns. BEM, Item 400, Page 8. In the instant case, claimant's daughter and representative argued that claimant's daughter is the only owner of the Bank of America certificate of deposit and that the funds were accumulated over numerous years by claimant's daughter. Claimant's representative has also stated that

the funds have come from various smaller accounts that have been compiled into the current account and that it was claimant's daughter's intentions that claimant's name be on the account for convenience in the event that claimant's daughter should predecease her mother and that claimant neither had nor has ever had ownership or availability to the funds as her own property.

In the instant case, this Administrative Law Judge finds that department policy dictates that cash assets which are jointly owned assets are considered to belong to the initial person. In the instant case, the cash in the account is not unavailable because claimant would have legal right to use the asset at any time as her name is on the account as a joint owner. The department directs the caseworker to count the entire amount unless the person claims and verifies a different ownership. An affidavit in support of a statement is not sufficient verification that the asset does not belong to claimant. An affidavit is simply a statement by claimant's daughter that the money is hers. The statement is insufficient to make the entire amount unavailable to claimant. Even if this Administrative Law Judge considered that half of the account belongs to claimant's daughter, claimant will still retain excess assets for purposes of medical assistance benefit eligibility. In SSI related medical assistance case's policy dictates that when there is a claimant and a spouse who jointly own an asset the department consider the claimant sole owner in determining the community spouse resource allowance. If the spouse is not a MA only client and does not receive FIP or SSI to consider the assets totally available unless otherwise claimed unverified. This Administrative Law Judge finds that there is insufficient information to verify that the account which is in claimant's and her daughter's name is only owned by the daughter. The department is to verify the following factors affecting exclusion of an asset at application, redetermination or when a change is reported:

- asset is not available
- joint ownership prevents sale and other owner refuses to sell
- there is a written agreement to repair/replace a damage or destroyed homestead
- there is a written agreement to purchase another homestead
- the asset is a bona fide loan
- an asset is not a saleable
- the equity value in income producing property
- any transfer of ownership of life insurance to fund a funeral
(BEM, Item 400, Page 35)

Verification sources include a monthly statement (but examination of a checkbook is not sufficient), telephone contact with the financial institution, copy of documents establishing an IDA or a statement from a trustee or custodian of the account. BEM, Item 400, Page 35.

In the instant case, the department has established by the necessary competent, material and of substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant had in excess of [REDACTED] in

countable available assets based upon the fact that claimant does have joint ownership in the account with [REDACTED] in it. The department's case must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant has in excess of [REDACTED] in countable available assets for purpose of medical assistance benefit eligibility. The department properly denied claimants' application for Medical Assistance under the circumstances in determining that claimant had [REDACTED], in countable available assets.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/17/11

Date Mailed: 3/17/11

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]