

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-7003
Issue No: 2021; 3021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 2010
Cass County DHS

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 March 18, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and Food Assistance Program (FAP) benefits based upon its determination that claimant possessed 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 April 29, 2009, claimant filed an application for Medical Assistance and Food Assistance Program benefits.

(2) Claimant was already active for Medical Assistance benefits in Berrien County with a review date of September 30, 2009.

(3) The department caseworker re-determined claimant's eligibility for Medical Assistance and determined eligibility for Food Assistance Program benefits.

(4) The department caseworker denied claimant's application for Medical Assistance benefits and Food Assistance Program benefits based upon its determination that claimant had excess assets for the Medicaid program.

(5) On September 1, 2009, the department caseworker sent claimant notice that her application for Medical Assistance benefits was denied.

(6) The department caseworker did not adjust the Food Assistance Program benefit case at the hearing.

(7) On September 1, 2009, claimant filed a request for a hearing to contest 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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10,

et seq., and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy dictates:

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.

- (11. “CASH” (which includes savings and checking accounts)
- (12. “INVESTMENTS”
- (13. “RETIREMENT PLANS”
- (14. “TRUSTS” PEM, 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). PEM, 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.

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

Exclusions. PEM, Item 400, p. 1.

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

You must consider the assets of each person in the asset group. See the program's asset group policy below. PEM, Item 400, p. 1.

An asset converted from one form to another (example: an item sold for cash) is still an asset. PEM, Item 400, p. 1.

SSI Related MA

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

FAP Only

There is no asset test for the Food Assistance program as all groups are either:

- (16. Categorically eligible, or
- (17. all members of the group are eligible for Domestic Violence Comprehensive Services. PEM, Item 400, p. 2.

At **application**, use the assets from the month of eligibility being determined. If excess assets exist at application, the group must verify that it meets the asset limit for any future month of eligibility. PEM, Item 400, p. 3.

In an **ongoing** case, use the assets the asset group expects to have in the benefit month. If countable assets exceed the limit during any day of the month, the group is ineligible for one calendar month. Close the case to affect the first month possible. Thereafter, the group may reapply and be asset eligible if countable assets are again below the limit. PEM, Item 400, p. 3.

AMP Asset Limit

AMP Only

\$3,000. PEM, Item 400, p. 3.

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. PEM, 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 PEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and PEM 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. PEM 400.

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

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see PEM 405). PEM, Item 400, p. 4.

SSI-Related MA Asset Limit

SSI-Related MA Only

For Freedom to Work (PEM 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 (PEM 165) and QDWI (PEM 169) the asset limit is:

- (18. \$4,000 for an asset group of one
- (19. \$6,000 for an asset group of two

For all other SSI-related MA categories, the asset limit is:

- (20. \$2,000 for an asset group of one
- (21. \$3,000 for an asset group of two. PEM, 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. PEM, Item 400, p. 6.

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

JOINTLY OWNED ASSETS

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

Jointly owned assets are assets that have more than one owner.

Note: For FTW determinations, jointly owned assets are considered to belong to the initial person.

An asset is unavailable if an owner **cannot** sell or spend his share of an asset:

- (22. without another owner's consent, and
- (23. the other owner is not in the asset group, and
- (24. the other owner refuses consent.

Exception: In SSI-related MA, when ownership is shared by an SSI-related child and his parent(s) **and** parental asset deeming applies, refusal to sell by either the child or the parent(s) does **not** make an asset unavailable.

Ownership documents for jointly owned real property commonly use one of four phrases:

- (25. **Joint Tenancy:** no owner can sell unless all owners agree.
- (26. **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.
- (27. **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.

- (28. **Tenancy-in-Common:** each owner can sell his share without the other owner's agreement. PEM, Item 400, p. 7.

NON-SALABLE ASSETS

SSI-Related MA Non-Salable Assets

SSI-Related MA Only

Do **not** count an asset when it has no current market value as shown by the following:

- (29. Two knowledgeable sources (example: realtor, banker, stockbroker) in the owner's geographic area state that the asset is **not** salable due to a specific condition. This applies to any assets listed under:

"INVESTMENTS"

"HOMES AND REAL PROPERTY"

"VEHICLES"

"Burial Space Defined"

"EMPLOYMENT AND TRAINING ASSETS" PEM, Item 400, p. 8.

In the instant case, there is no asset test for Food Assistance Program benefits. The department did not address the Food Assistance Program benefit eligibility or lack thereof during the hearing. Therefore, this portion of the case must be reversed.

Claimant testified on the record that the houses that she owns are not habitable. Claimant owns two different homes, but lives in an apartment. Therefore, claimant does not have a homestead exclusion. The SEV on one of the homes equals \$ [REDACTED]. The SEV on the second home is \$ [REDACTED] for a combined property SEV of \$ [REDACTED]. Neither property is in formal foreclosure and neither property has been formally condemned. Therefore, in the instant case, the department has established by the necessary competent, material and substantial evidence in 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

two houses which are neither in foreclosure nor have been formally condemned, and neither of the houses are places where claimant lives. Therefore, claimant does not have a homestead exclusion. 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 purposes of Medical Assistance benefit eligibility. The department properly denied claimant's application for Medical Assistance under the circumstances and determined that claimant had \$21,400 in countable, available assets.

Accordingly, the department's decision is PARTIALLY AFFIRMED. However, the department did not adjust the Food Assistance Program benefit eligibility at the hearing. Therefore, this Administrative Law Judge finds that in terms of the Food Assistance Program benefits, the department's decision is REVERSED.

The department is ORDERED to reinstate claimant's April 29, 2009 application for Food Assistance Program benefits, and make a determination of whether or not claimant is otherwise eligible to receive Food Assistance Program benefits from the application date forward. If claimant is found otherwise eligible for Food Assistance Program benefits, the department is ORDERED to pay to claimant an appropriate supplement.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 4, 2010

Date Mailed: June 4, 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 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.

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cc:

