

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: 2010-7231
Issue No: 2021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 18, 2010
Ingham 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 claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, May 18, 2010. The claimant personally appeared and testified with his attorney, [REDACTED].

ISSUE

Did the department properly determine that the claimant was not eligible for Medical Assistance (MA-P) due to 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) The claimant was a recipient of MA-P with a redetermination due May 2009.
- (2) The claimant provided written verification of an IRA money market investment with an account balance of [REDACTED]. (Department Exhibits 3 and 5)

(3) The claimant had a [REDACTED] checking account with a balance of [REDACTED] and a money market investment of [REDACTED] for a combined balance of [REDACTED]. (Department Exhibit 7)

(4) The claimant receives [REDACTED] in Retirement, Survivor's and Disability Insurance from the Social Security Administration. (Department Exhibit 8)

(5) On May 9, 2009, the department caseworker calculated the claimant's continued eligibility for MA-P benefits. The claimant had a total countable resources amount of [REDACTED] which resulted in the claimant failing the resource eligibility result because the asset limit is [REDACTED]. The claimant was [REDACTED] over the asset limit for MA-P. (Department Exhibit 6)

(6) On May 9, 2009, the department caseworker calculated the claimant's continued eligibility Medicare Cost Savings Plan. The claimant had a liquid asset and total countable resource amount of [REDACTED], which resulted in the claimant's passing of resource eligibility result because the asset limit is [REDACTED]. (Department Exhibit 4)

(7) On May 9, 2009, the department caseworker sent the claimant a notice that he was no longer eligible for MA-P because of excess assets, but was still eligible for the Medicare Cost Savings Plan where the State of Michigan would pay his Plan B deductible with an effective action date of June 1, 2009.

(8) On July 22, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(9) During the hearing, it was determined that the claimant had no outstanding bills from the time his MA-P closure in June 2009 to the date of the hearing of May 18, 2010. The claimant was encouraged to reapply for MA.

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 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” 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.

Assets must be considered and determine eligibility for Medical Assistance categories.

The department has to consider cash, investments, retirement plans, and trusts. BEM, Item 400.

Assets mean cash, any other personal property, and real property. BEM, Item 300. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability test and is not excluded. BEM, Item 400. In the instant case, there was no argument as to how much the claimant had in his accounts.

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:

- . \$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. 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.

A preponderance of the evidence on record establishes that the claimant had countable assets in excess of [REDACTED] on the date of his redetermination. The MA asset limit a person in the claimant's circumstances is [REDACTED]. Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's redetermination of MA benefits due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that the claimant's redetermination for MA benefits 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: June 23, 2010

Date Mailed: June 23, 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.

SMB/vc

cc:

[REDACTED]