

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. 20108855
Issue No. 2014
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 6, 2010
Sanilac 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 6, 2010. The claimant personally appeared and testified with his legal guardian and oldest brother, [REDACTED], the claimant's sister, [REDACTED], and support coordinator, [REDACTED], from Community Mental Health.

ISSUE

Did the department properly determine that the claimant was no longer eligible for Disabled Adult Child (DAC) status and would have a Medical Assistance (MA) deductible because of excess income?

FINDINGS OF FACT

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

1. The claimant was a recipient of DAC benefits.
2. Subsequently, the claimant lost his DAC status and had to be considered for regular MA.
3. The claimant receives [REDACTED] in RSDI benefits. (Department Exhibit 18)

4. On June 18, 2009, the department caseworker sent the claimant a redetermination notice that required an appointment on July 1, 2009 to determine the claimant's continued eligibility for benefits. (Department Exhibit 19-22)
5. Subsequently, the department caseworker determined the claimant's eligibility for continued MA benefits based on his RSDI income of [REDACTED]:
 - The claimant was eligible for an unearned income general exclusion of \$20, resulting in a net unearned income of [REDACTED].
 - The claimant had an earned income of [REDACTED], which was below the threshold that needs to be counted.
 - The claimant had a protected income limit of [REDACTED] for a group size of one for his shelter area.
 - Therefore, the claimant's household had an excess income or a deductible in the amount of [REDACTED] resulting from the claimant's protected income level of [REDACTED] being subtracted from his fiscal net income of [REDACTED]. (Department Exhibit 13-14)
6. On September 10, 2009, the department caseworker sent the claimant a notice that he had a MA deductible of [REDACTED]. (Department Exhibit 5-10)
7. On September 14, 2009, the department received a hearing request from the claimant, contesting the department's negative action.
8. During the hearing, the claimant's brother and legal guardian was concerned to know why the claimant was no longer eligible for DAC.
9. During the hearing, the department caseworker stated that the claimant had excess income from his deceased parents' Social Security income where the limit for DAC is \$674 and the claimant receives over [REDACTED] in Social Security benefits.
10. During the hearing, the record was left open for the local office to contact Central Office for a written verification as to why the claimant's DAC status was changed.
11. On November 4, 2010, the department caseworker sent this Administrative Law Judge a memo stating that Social Security required, during the claimant's SSI review, verification of a bank account, but no verification was ever submitted. As a result, the claimant's SSI was put into closure due to the account not being verified. The claimant's SSI ended September 2005 and no application was submitted for any further SSI entitlement. The claimant's DAC entitlement started in 1993 and

continued, but DAC did not close his SSI. The claimant's unverified bank account was the asset that closed his SSI in 2005. There was no change to the claimant's record until 2008 when there was an increase in his DAC payment. The claimant is precluded from the department considering him for DAC Medicaid because of his lack of SSI pursuit or entitlement. DHS DAC Medicaid policy states that the claimant must be receiving SSI and that the SSI closes due to DAC RSDI start or increase per BEM 158.

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).

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.

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 BEM 405). BEM, Item 400, p. 4. i05022

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.

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.

LIF, G2U, G2C, SSI-Related MA

Lump sums and accumulated benefits are income in the month received. See BEM 500 about countable income policy.

Exception: The following are assets:

- . Income tax refunds
- . Nonrecurring proceeds from the sale of assets
- . Payments that are excluded assets BEM, Item 400, p. 10.

RETIREMENT PLANS

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

This section is about the following types of assets:

- . Individual retirement accounts (IRAs)
- . Keogh plans (also called H.R. 10 plans)
- . 401k plans
- . Deferred compensation
- . Pension plans
- . Annuities--An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. BEM, Item 400, pp. 14-15.

MA GROUP 2 INCOME ELIGIBILITY

Deductible

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred.

Active Deductible

Open an MA case **without ongoing Group 2 MA coverage** on CIMS as long as:

- . The fiscal group has excess income, **and**
- . At least one fiscal group member meets all other Group 2 MA eligibility factors.

Such cases are called active deductible cases. Periods of MA coverage are added on CIMS each time the group meets it deductible.

Deductible Period

Each calendar month is a separate spend-down period.

Deductible Amount

The fiscal group's monthly excess income is called a deductible amount. BEM 545, pp. 8-9.

Meeting a Deductible

Meeting a deductible means reporting and verifying allowable medical expenses (defined in "**EXHIBIT I**") that equal or exceed the deductible amount for the calendar month tested. BEM, Item 545, p. 9.

The group must report expenses by the last day of the third month following the month for which it wants MA coverage. BAM 130 explains verification and timeliness standards. BEM, Item 545. p. 9.

In the instant case, the claimant had previously been a recipient of DAC Medicaid based on his SSI. Subsequently, Social Security requested verification on a bank account that was not received, which resulted in the claimant's SSI being closed in September 2005. As a result, the claimant is not eligible for DAC Medicaid because he's not receiving SSI and his SSI did not close due to DAC RSDI start or increase per BEM 158. The claimant through his legal guardian may want to contact Social Security to determine what happened that the verification of the bank account was not provided in September 2005 and whether SSI benefits can once again be pursued for the claimant to make him DAC Medicaid eligible.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA). BEM 105.

The State of Michigan has set guidelines for income, which determine if an MA group is eligible. Income eligibility exists for the calendar month tested when:

- . There is no excess income, **or**
- . Allowable medical expenses equal or exceed the excess income (under the Deductible Guidelines). BEM 545.

Net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105. Income eligibility exists when net income does **not** exceed the Group 2 needs in BEM 544. BEM 166. The protected income level is a set allowance for non-medical need items such as shelter, food and incidental expenses. PRT 240 lists the Group 2 MA protected income levels based on shelter area and fiscal group size. BEM 544. An eligible Medical Assistance group (Group 2 MA) has income the same as or less than the "protected income level" as set forth in the policy contained in the Program Reference Table (PRT). An individual or MA group whose income is in excess of the monthly protected income level is ineligible to receive MA. However, a MA group may become eligible for assistance under the deductible program. The deductible program is a process, which allows a client with excess income to be eligible for MA, if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. The MA group must report expenses by the last day of the third month following the month it wants medical coverage. BEM 545; 42 CFR 435.831.

In this case, the claimant has a fiscal net income of [REDACTED]. The claimant's protected income level in his shelter area for a group size of one is [REDACTED]. PRT 240. After subtracting the claimant's total needs amount of [REDACTED] from his total fiscal group net income of [REDACTED], the claimant would be left with an excess income or deductible of [REDACTED].

Therefore, the claimant's MA deductible determination must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly placed the claimant's MA case in deductible status and determined the monthly deductible of [REDACTED]. The claimant was removed from SSI as a result of an unverified bank account and not entitled to DAC Medicaid, but the claimant's guardian may wish to pursue further consideration through Social Security.

Accordingly, the department's MA deductible action is **AFFIRMED**.

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

Date Signed: November 30, 2010
Date Mailed: November 30, 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.

CGF / vc

cc:

