

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 20109777
Issue No. 2021
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: June 17, 2010
Delta 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 3-way telephone hearing was held on Thursday, June 17, 2010. The claimant was not present, but was represented by his daughter, [REDACTED], who is also his guardian and conservator and attorney, [REDACTED].

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA) based upon its determination that the 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 15, 2009, the claimant was admitted to long-term care.
2. On July 13, 2009, the claimant applied for MA. (Department Exhibit 5-11)
3. On October 21, 2009, the department caseworker sent the claimant and his daughter who is also his guardian and conservator a notice that the claimant's MA application was denied due to excess assets based on 20 acres of property. (Department Exhibit 36-40)
4. On November 6, 2009, the department received a hearing request from the claimant, contesting the department's action.

5. During the hearing, the claimant's attorney stated that on October 2, 2009 that a listing agreement was entered because the court did not give permission to sell the property until September 23, 2009. The claimant's daughter who is also his guardian and conservator petitioned the court to sell the property on July 24, 2009. (Department Exhibit 34-35) The daughter was not awarded guardianship/conservatorship until June 4, 2009. (Department Exhibit 26-28) The claimant's property is currently listed for [REDACTED] for the 20 acres. (Department Exhibit 34-35)

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.

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.

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.

NON-SALABLE ASSETS

SSI-Related MA Non-Salable Assets

SSI-Related MA Only

Give the asset a \$0 countable value when it has no current market value as shown by one of the following:

- Two knowledgeable, appropriate sources (example: realtor, banker, stock broker) 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
- VEHICLES
- LIVESTOCK
- Burial Space Defined
- EMPLOYMENT AND TRAINING ASSETS
- HOMES AND REAL PROPERTY (See below)

- In addition, for homes, life leases, land contracts, mortgages, and any other real property, an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. The asset becomes salable when a reasonable offer is received. Count an asset that no longer meets these conditions.

For applicants, an active attempt to sell must have started at least three months prior to application and must continue until the property is sold. For recipients, the asset must have been up for active sale at least 30 days prior to redetermination and must continue until the property is sold. An "Active Attempt to Sell" means the seller has a set price for fair market value, is actively advertising the sale in publications such as

local newspapers, and or is currently listed with a licensed realtor. BEM, Item 400, p. 9.

Assets mean cash, any other personal property, and real property. BEM, Item 400. 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, p. 1. In the instant case, there was no argument as to the fact that the claimant owned 20 acres that were listed available for sale at [REDACTED].

**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.

Exception: This does **not** apply to trusts. There are special rules about trusts. See “**TRUSTS**” below for FIP, SDA and AMP. See PEM 401 for MA trust policy.

Assume an asset is available unless evidence shows it is **not** available.

An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:

- A person's guardian dies and a new guardian has **not** been appointed yet.
- A court decides a person needs a guardian, but has **not** appointed one yet.
- A person is unconscious and his family asks the court to appoint a guardian.

Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. See “**JOINTLY OWNED ASSETS**”, “**NON-SALABLE ASSETS**” and “**VICTIMS OF DOMESTIC VIOLENCE**” below.

The claimant’s daughter and conservator and guardian applied for MA on July 13, 2009 after she was awarded her guardianship/conservatorship on June 4, 2009. The claimant did petition the court on July 24, 2009 for permission to sell the property. The property was not available for sale until October 2, 2009 which is three months after the July 13, 2009 application. Policy clearly states that for applicants an active attempt to sell must have started at least three months prior to application and must continue until the

property is sold. An active attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as a local newspaper, and/or is currently listed with a licensed realtor. BEM, Item 400. As a result, the claimant would not be eligible to apply for MA until January 2010.

The claimant's attorney argues that the property was not available to sell because the claimant was admitted to long-term care on June 15, 2009. The claimant's daughter was not awarded guardianship/conservatorship until June 4, 2009. In addition, they had to petition the court to sell the property on July 24, 2009 and the court did not give permission until September 23, 2009. This Administrative Law Judge notes that policy clearly states that an asset remains available during periods in which a guardian or conservator is being sought, which includes the situation that we have here. The claimant has dementia/Alzheimer's, which required him to be hospitalized, but the claimant's property is an asset and it was available. The claimant's daughter, guardian/conservator is encouraged to reapply for MA benefits with retroactive benefits for the claimant.

A preponderance of the evidence on the record establishes that the claimant had countable available assets in excess of \$2,000 on the date of his application. The MA asset test limit for a person in claimant's circumstances is \$2,000. Therefore, the Administrative Law Judge concludes that the department correctly denied the claimant's MA application 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 application 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: July 29, 2010

Date Mailed: July 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.

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:

