

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

[REDACTED]
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 September 1, 2011. Claimant was not present, but was represented by his daughter, [REDACTED].

ISSUE

Did the department properly determine Claimant was excess assets to receive Medicaid beginning April 2011?

FINDINGS OF FACT

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

1. Claimant applied for Medicaid on April 20, 2011. A copy of the [REDACTED] [REDACTED] was sent to the Medicaid Policy Unit for review. (Hearing Summary).
2. On May 11, 2011, the Medicaid Policy Unit issued a memorandum that indicated the homestead is a countable asset if it is in the trust, but if conveyed out of the trust and back to the customer/community spouse, it would be exempt property effective the month it was transferred. (Department Exhibit 2).
3. On May 25, 2011, the department issued a Notice of Case Action (DHS-1605) denying Claimant's Medicaid application, due to excess assets. (Department Exhibit 9-10).

4. Claimant's daughter submitted a hearing request on Claimant's behalf on June 6, 2011, disputing the denial of Medicaid.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Manuals Table (RFT).

Department policy states:

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.

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. BEM, Item 400, p. 3.

Use the special asset rules in BEM 402 for certain married L/H and waiver patients. See PRG, Glossary, for the definition of L/H patient and BEM 106 for the definition of waiver patient.

HOMES AND REAL PROPERTY EXCLUSIONS

Homestead Definition and Exclusion

SSI-Related MA Only

A homestead is where a person lives (unless "**Absent from Homestead**") that he owns, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude the asset group's homestead. BEM, Item 400, p. 18.

Asset eligibility is a condition of SSI-related Medicaid eligibility. BEM 400. Department policy indicates that a homestead will be excluded as an asset in most circumstances. BEM 400. However, if the homestead is in a Medicaid Trust, the homestead becomes a countable asset. BEM 401. The homestead does not become exempt property until the month it is conveyed back to the claimant/spouse (provided that it meets all criteria in BEM 400).

Claimant applied for Long Term Care Medicaid on April 20, 2011, and provided the department a copy of the Revocable Living Trust and the Notice of Assessment, Taxable Valuation and Property Classification showing Claimant's homestead was owned by Claimant's revocable living trust. Because the home was titled to the revocable trust, the countable asset value of \$204,200.00 (current SEV x 2) was used in the Medicaid budget. As a result, Claimant's application for Medicaid was denied for excess assets.

Claimant argues that because the Warranty Deed gives him a Life Estate, he owns the property and has the power to sell it at any time. Therefore, the homestead is not an asset of the revocable trust and as such, cannot be counted as an asset. The Warranty Deed in this case, conveys and warrants the homestead to Claimant's daughter, reserving Claimant a life estate to it.

Policy defines a life estate as giving the person who holds it certain rights, "usually the right is the right to live on the property." BEM 400. "The person holding the life estate. . . can sell it, but does not own the actual property and normally cannot sell the actual property." BEM 400. In addition, policy clearly states that unless the property is transferred out of the trust and back to the Claimant or Claimant's spouse, the property is not exempt and is counted as an asset.

As a result, because the homestead was in the revocable trust, it must be counted as an asset. Therefore, the Administrative Law Judge finds, based on the evidence

