

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: 2011-7894
Issue No: 2021
Case No: [REDACTED]
Hearing Date:
March 29, 2011
Livingston 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 29, 2011. Claimant is in long term care [REDACTED]. She was represented by her daughter and Durable Power of Attorney, [REDACTED]. Claimant had originally been represented by [REDACTED] during the application period, but the law firm subsequently withdrew its representation.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance Benefits for the month of May 2009?

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 [REDACTED] claimant entered Long Term Care.
- (2) On November 17, 2009, claimant filed an application for Medical Assistance benefits.
- (3) On November 20, 2009, the department denied the application stating that claimant had excess assets.
- (4) On December 15, 2009, a second application was filed on claimant's behalf.

- (5) On December 28, 2009, the department caseworker sent claimant a verification checklist, requesting information which was due January 8, 2010.
- (6) No verification was provided.
- (7) On March 13, 2010, the department caseworker again requested verification information.
- (8) On March 22, 2010, all verifications were provided to the department.
- (9) The worker processed the MA application on July 1, 2010, which was outside of the 45 day Standard of Promptness.
- (10) On July 30, 2010 the application was denied for excess assets and because property listed for sale over fair market value.
- (11) Claimant's representative asked for a reconsideration of the determination.
- (12) On September 7, 2009, the department caseworker clarified with the policy office that land contracts are countable assets and should be included in the original budget plan.
- (13) On October 1, 2010, the department caseworker sent claimant notice that her application was denied.
- (14) On October 21, 2010, claimant's representative filed a request for a hearing to contest the department's negative actions.
- (15) On November 3, 2010, the attorney from [REDACTED] requested an extension on the denial so that the client could try to spend down or sell her assets.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

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). BEM, 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.

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

Exclusions. BEM, Item 400, p. 1.

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

SSI Related MA

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

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.

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 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.

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. BEM 400.

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

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.

The facts are not at issue in this case. The department properly determined that claimant had excess assets and the department's case must be upheld. The evidence on the record did show that claimant had in excess of \$2,000.00 in countable, available assets after all appropriate deductions were taken, on the date of both applications. The excess assets were in the form of real property and land contracts. (Exhibits 1-4)

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Unfortunately, the Administrative Law Judge has no equity powers. Department policy requires that the department certify program approval or denial of the application within 45 days. BAM, Item 115, page 11. If an application is **not** processed by the standard of promptness (SOP) date, document the reason(s) in the case record. The department caseworkers are instructed to document further delays at 30-day intervals. BAM, Item 115, page 23. The local office is **not** expected to:

- Provide estate planning advice.
- Provide funeral planning advice.
- Determine the effect on eligibility of proposed financial arrangements such as a proposed trust. BAM, Item, 105, page 9

The fact that the department caseworker went beyond the Standard of Promptness when making a determination in this case does not affect the bottom line, that claimant did possess excess assets. Claimant's representative's statement that she would have been able to spend the property down or sell the assets sooner if she had had the information earlier is speculative and cannot be taken into consideration. Department policy specifically dictates:

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

Therefore, until claimant's representative disposed of the properties correctly and spent down the assets to under \$2000.00, claimant remained ineligible to receive Medical Assistance benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant possessed in excess of \$2000.00 in countable available assets. 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 denied claimant's applications for Medical Assistance, based on claimant having excess countable available assets.

Accordingly, the department's decision is **AFFIRMED**.

Landis _____/s/

Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 4, 2011

Date Mailed: March 5, 2011

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.

LYL/alc

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