

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-8250
Issue No.: 2021
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: February 3, 2011
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

AMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37. This matter having been heard by the undersigned Administrative Law Judge on February 3, 2011 and a written Hearing Decision having been issued by the Administrative Law Judge on March 29, 2011. This Amended Hearing Decision is issued for the purpose of correcting the Claimant's mailing address. The decision of March 29, 2011 is adopted as stated herein.

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on February 3, 2011. The Claimant was represented by her attorney, [REDACTED]

ISSUE

Did the Department of Human Services (Department) properly close the Claimant's Medical Assistance (MA) due to excess assets?

FINDINGS OF FACT

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

1. Upon redetermination the Department closed the Claimant's MA due to excess assets.
2. On November 4, 2010, the Claimant filed a request for a hearing.

CONCLUSIONS OF LAW

The 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 (formerly known as the Family Independence Agency) 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 Program Reference Manual (PRM).

The Department relies on BEM 400 which says in part:

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 IRAs and 401ks) may be of unlimited value.

For Medicare Savings Programs (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 400, p.5.

and:

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.

Retirement Plan Value

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

The value of these plans is the amount of money the person can currently withdraw from the plan. Deduct any early withdrawal penalty, but not the amount of any taxes due.

Funds in a plan are **not** available if the person must quit his job to withdraw any money. BEM 400, pp. 15-16.

In the instant case, there is no question as to the assets contained in the Claimant's 401k retirement plan. The Department presented documentation of assets totaling \$6,767.69. This figure was correct, according to the Claimant's attorney. The Claimant's attorney argued that the funds were not available. Documentation supplied by the Claimant shows that the funds are available under a "hardship withdrawal."

This Administrative Law Judge finds that the Department correctly closed the Claimant's MA. The Claimant can withdraw funds in the event of a hardship. This is not a reason for which the funds may be excluded.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, AFFIRMS the Department's decision.



Michael J. Bennane
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 17, 2011

Date Mailed: June 20, 2011

2011-8250/MJB

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.

MJB/cl

cc:

