

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201110231
Issue No: 2021
Case No: [REDACTED]
Hearing Date: May 12, 2011
Kent County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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, an in-person hearing was held on May 12, 2011. The claimant appeared and testified.

ISSUE

Was real estate with life estate interest a countable trust asset?

FINDINGS OF FACT

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

- (1) From July 16, 2010, until date of death on [REDACTED], the claimant resided in a nursing home.
- (2) On July 30, 2010, the claimant and her spouse transferred title to their homestead solely to the claimant's spouse. And the spouse, [REDACTED] subsequently executed a deed (Claimant Exhibit 5 and 6) transferring the residence to [REDACTED], not individually, but as trustee of the [REDACTED] Trust under agreement dated [REDACTED] (Claimant Exhibit 23) but retaining a life estate and an unrestricted power to convey the property during his lifetime.
- (3) On September 28, 2010, the claimant applied for MA.

- (4) On [REDACTED], the claimant died.
- (5) On November 19, 2010, the application was denied based on excess assets per BEM 400/401.
- (6) On December 1, 2010, the claimant's spouse requested a hearing.
- (7) Both parties agree that if the property which is the subject matter of the deed (Claimant Exhibit 1) retains its homestead exemption and not a countable asset, then, the claimant will not have excess assets, otherwise she will.

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 facts above are undisputed:

The DHS claims that once the homestead was transferred to the trust, it was no longer an exempt homestead and had to be counted as an asset of the spouse's trust; and that caused the claimant and her spouse to have assets in excess of the protected spousal amount.

The claimant claims that no transfer took place upon execution of the deed; and that, therefore, the property remains an exempt homestead of the claimant's spouse and not a countable asset.

A homestead is where a person lives (unless Absent from Homestead, see below) that he owns, is buying or holds through as life estate or life lease. BEM 400, page 200.

Therefore, the real property in question cannot be counted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the real estate mentioned above is not a countable trust assets.

Accordingly, excess assets were not established.

/s/
William Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 26, 2011

Date Mailed: May 27, 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 receipt 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.

WAS/ar

cc:

