

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

presented, the department properly denied Claimant's Medicaid application for excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined Claimant was excess assets to receive Medicaid.

Accordingly, the department's determination is UPHELD.

It is SO ORDERED.

\_\_\_\_\_/s/  
Vicki L. Armstrong  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 9/12/11

Date Mailed: 9/12/11

**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.

VLA/ds

■ [REDACTED]