

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

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████████████████████

Reg. No: 2011-9307
Issue No: 2009; 2010
Case No: ██████████
Load No:
Hearing Date:
April 28, 2011
Dickinson County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 April 28, 2011, in Iron Mountain. Claimant was represented by ██████████.

The department was represented by Renee Trudeau (AP Supervisor) and Mary Saltz (ES).

ISSUE

Did DHS correctly deny MA-P eligibility for the period of November 2009 through December 2010 because claimant had excess assets over the \$3,000 limit?

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 December 8, 2009, claimant applied for MA-P and retro MA-P (November 2009). ██████████. co-signed claimant's application.
- (2) On April 19, 2010, SHRT denied claimant's application.
- (3) On June 15, 2010, the undersigned Administrative Law Judge held an in-person hearing on the issue of MA-P eligibility.

- (4) On September 7, 2010, the undersigned ALJ decided: "Meets the MA-P disability requirements."
- (5) On September 2010, DHS processed claimant's MA-P application to determine the financial eligibility requirements.
- (6) On the date of the financial eligibility review, the applicable asset limit was \$3,000, for an application dated December 2009.
- (7) During the asset evaluation phase (September 2010) DHS discovered that the asset portion of claimant's application (DHS-1171) was incorrect and misleading. On the application, claimant listed a "shed" in the asset section of the application. When the caseworker attempted to ascertain the value of the "shed," she discovered that it was a "camp." A "camp" is a piece of rural real property.
- (8) The "camp" had an undisputed value of \$3,600, which exceeded the MA-P asset limit on the date the application was filed (December 8, 2009).
- (9) The caseworker promptly notified claimant that she was not eligible for MA-P on the date of application (November 2009) due to excess assets.
- (10) At the department's suggestion, claimant made arrangements to change the legal ownership of the "camp." Based on the change in ownership, the "camp" became an exempt asset.
- (11) In January 2011, claimant notified DHS that the ownership of the "camp" had been modified and DHS revalued the "camp" at zero dollars.
- (12) Based on the ownership changes for the "camp," DHS approved claimant for MA-P effective January 2011.
- (13) ■■■■ thinks that DHS violated its initial asset assessment policy (BEM 402) because DHS did not complete an initial assessment when it determined claimant's MA-P eligibility in January 2011.
- (14) DHS thinks that an IAA (initial asset assessment) is not required because: (a) claimant was not hospitalized for more than 30 days in November 2009, and (b) Claimant did not request an IAA on the application date.

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 department's policy manuals provide the following relevant policy statements and instructions for caseworkers:

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. BEM 400.

In this case, [REDACTED] argued that the department's denial of claimant's application for November 2009 was incorrect because the department did not perform an IAA (initial asset assessment). Claimant's position is not supported by a careful reading of the applicable manual policy at BEM Item 400. In addition, claimant did not request an IAA at the time of application. [REDACTED] requested an IAA only after the department denial dated.

It is undisputed that claimant's countable MA assets in December 2009 exceeded a \$3,000 asset limit.

It is important to note that [REDACTED], a *de facto* law firm, has a fiduciary duty to honestly report all assets owned by claimants on the DHS-1171 (application). The Administrative Law Judge concludes, based on a careful review of the entire record, that [REDACTED] did not act in good faith when it failed to report accurately and completely the correct value of the "shed." In fact, the "shed" was actually a "camp" which had a value (\$3,600) in excess of the MA asset limit.

The Administrative Law Judge, based on a careful review of the entire record concludes that the department's decision was correct for the following reasons:

- (1) The initial application filed by claimant [REDACTED] [REDACTED] was misleading and inaccurate. The initial application, dated December 8, 2009, did not properly report claimant's real property. The claimant's 'camp' was listed as a 'shed.'
- (2) The caseworker, after a careful assessment of claimant's property, correctly determined that the 'camp' had a value in excess of \$3,000, and correctly concluded that claimant's total countable assets exceeded the MA asset limit (\$3,000) which was in effect for MA applications filed in December 2009.
- (3) Claimant was not asset eligible for MA until January 2011, when changes were made in the title of the 'camp' which allowed the department to treat it as an 'exempt asset.'

- (4) Claimant did not request an Initial Asset Assessment (IAA) at the time of application.
- (5) [REDACTED] did not request an IAA assessment until after the department issued the denial based on excess assets.

The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy (BEM 400) when it decided the claimant was not eligible for MA. Furthermore, claimant did not meet her burden of proof to show that the department's denial of her MA-P application was reversible error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly denied claimant's MA-P application, due to claimant's failure to establish the required asset eligibility.

Accordingly, the department's action is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____

Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 27, 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.

JWS/tg

cc:

