

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

IN THE MATTER OF:

[REDACTED]
319 NORTH GRATIOT AVE
MOUNT CLEMENS, MI 48043

Reg. No: 201234534
Issue No: 2021
Case No: [REDACTED]
Hearing Date: August 28, 2012
Macomb #12 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, a telephone hearing was held on Tuesday, August 28, 2012. Claimant's authorized representative [REDACTED] appeared on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED]
[REDACTED]

ISSUE

Was excess assets established?

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's MA-P (December retro)(LTC) application on December 29, 2011 was denied January 31, 2012 based on excess assets per BEM 200 for December and approved for January, with a hearing request on February 7, 2012.
2. On January 24, 2012, the Department of Human Services (DHS) representative learned from the LTC facility that it had Claimant's refundable security deposit of [REDACTED] and it would only be used towards the Claimant's bill if MA-P was denied.
3. On January 24, 2012, Claimant had a refundable [REDACTED] on deposit with the [REDACTED].

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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Facts above are undisputed.

**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:

- . [REDACTED] for an asset group of one
- . [REDACTED] for an asset group of two

For all other SSI-related MA categories, the asset limit is:

- . [REDACTED] for an asset group of one
- . [REDACTED] for an asset group of two. BEM, Item 400, p. 4.

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

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset. BEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. BEM, Item 400, p. 6.

The Claimant argues that the nursing home security deposit was not available to Claimant before the negative case action on January 31, 2012; that it would only be available if Claimant were approved for MA-P.

The DHS argues that the nursing home stated it was refundable before the MA-P was denied; and that it would be used if the deposit was still on deposit with the LTC facility if MA-P was denied.

It would appear the classification on "availability" could have been resolved with evidence from the LTC facility.

The Claimant was the moving party in this matter and had the burden of proof to establish the unavailability of the deposit.

Therefore, unavailability of the asset has not been established by the competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that excess asset was established.

Accordingly, retro MA-P denial for December is UPHELP.

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

Date Signed: August 31, 2012

Date Mailed: August 31, 2012

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.

WAS/tb

cc:

