

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

IN THE MATTER OF:



Reg. No: 201251965
Issue No: 2020
Case No: [REDACTED]
Hearing Date: July 12, 2012
Newaygo County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 July 12, 2012. The claimant's authorized representative, [REDACTED], appeared and provided testimony.

ISSUES

Whether the department properly denied the claimant's Medical Assistance (MA) application due to excess assets?

FINDINGS OF FACT

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

1. The claimant applied for MA benefits on February 7, 2012.
2. Based upon verifications obtained by the department, it was determined that the claimant had countable assets in excess of the allowable amount.
3. Based upon the asset valuation, the department sent the claimant a notice of case action (DHS 1605) on April 18, 2012, stating that the claimant's MA application was being denied due to excess assets. (Department Exhibits 30-35).
4. The claimant's authorized representative filed a request for hearing on April 30, 2012, protesting the denial of her application.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1)

Clients have the right to contest a department decision affective eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

In order to be eligible for MA benefits, an individual must meet the prescribed asset limits. BEM 400. For SSI related MA, the asset limit for a group size of one is \$2,000.00. Department policy defines assets as follows:

Assets Defined

Assets means cash, any other personal property and real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. **Personal property** is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). BEM 400.

Additionally, policy states that in order for an asset to be countable, it must be available and not excluded. Available mean that someone in the asset group has the legal right to use or dispose of the asset. BEM 400.

The case at hand turns on the availability of the claimant's assets. The asset in question is a bank account listed in the name of Mathew B. Shepherd, Conservator for Grace Thompson with a balance as of October 31, 2011 of \$10,394.12 (see Department Exhibit 25). The value of this asset clearly exceeds the limit listed in policy above.

At the hearing, the claimant's authorized representative testified that this account was set up as a result of a lawsuit and that the funds are only available for limited and specific purposes as defined by court order. The claimant's authorized representative provided a copy of a consent judgment from the 27th Circuit Court for the county of Newaygo that she claims evidences the limitations on the funds in question

(see Department Exhibits 13-16). However, this order is not dated, stamped as a true copy, or signed by any parties involved or a judge. Additionally, the unsigned order states that the funds in question are to be placed in a “separate account for the beneficial use, as defined in this order, of Grace Thompson.” The unsigned order goes on to state that the funds shall be used to pay the property taxes, heating bills, and house insurance for a home located at 340 Division, to which the claimant has a life estate. The unsigned order goes on to state that the funds shall also be utilized “for any other extraordinary expenses for the benefit of Grace Thompson.”

While the claimant’s authorized representative argues that the funds may only be used for limited specific purposes, there has not been sufficient evidence presented to establish such. The order that has been presented by the claimant’s authorized representative is not signed or dated and therefore cannot be construed to be controlling. Additionally, even if the order was signed and could be considered to be controlling, it specifically states that the funds may be used for “any other extraordinary expenses for the benefit of Grace Thompson.” Therefore, because the funds may be utilized for the benefit of the claimant, the funds are available to the claimant.

Policy does address the issue of the availability of funds when there is a conservatorship involved. BEM 400 states as follows:

Assume an asset is available unless evidence shows it is **not** available.

An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:

- A person's guardian dies and a new guardian has **not** been appointed yet.
- A court decides a person needs a guardian, but has **not** appointed one yet.
- A person is unconscious and his family asks the court to appoint a guardian. BEM 400.

Policy states that even when there is a conservator in place, assets held in the name of the claimant are still considered available to the claimant. Additionally, the department is to assume that an asset is available unless evidence shows that the asset is not available. The Administrative Law Judge finds that there has not been sufficient evidence presented to show that the asset in question, the bank account, is unavailable to the claimant. Accordingly, the department acted properly in accordance with policy in denying the claimant’s application based on the information that was available at the time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy in denying the claimant's MA application based on excess assets.

Accordingly the department's actions are **AFFIRMED**. It is SO ORDERED.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 31, 2012

Date Mailed: August 1, 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 60 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.

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