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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-013935
Issue No.: 2001
Case No.: [redacted]
Hearing Date: January 22, 2015
County: WAYNE-DISTRICT 82 (ADULT MEDICAL)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 22, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative (AHR), [redacted]

Participants on behalf of the Department of Human Services (Department or DHS) included [redacted], Assistant Payment Supervisor; and [redacted], Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA) application dated July 14, 2014, retroactive to June 2014?

FINDINGS OF FACT

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

1. On June 2, 2014, Claimant was admitted into a nursing facility (long term care facility (LTC)). See Exhibit 4, p. 9.

2. On July 14, 2014, Claimant's spouse submitted a DHS-4574, Medicaid Application for Nursing Facility Patient and a DHS-4574-B, Assets Declaration for Patient and Spouse, retroactive to June 2014. See Exhibit 4, pp. 6-14.

3. In the application packet, Claimant's spouse notated the following assets: three bank accounts; a home, life estate/life lease; a 401k; and one vehicle. See Exhibit 4, p. 10.

4. On July 31, 2014, the Department sent Claimant and/or her spouse a Verification Checklist (VCL), which was due back by August 11, 2014. See Exhibit 4, pp. 15-16. The VCL requested verification of the spouse's 401k statement, bank statements, and other documentation. See Exhibit 4, pp. 15-16.

5. On an unspecified date, Claimant and/or her spouse provided verification of the spouse's 401k. See Exhibit 1, pp. 1-50. The 401k statement was for the time period of April 1, 2014 to June 30, 2014 and had a vested balance of $92,696.75. See Exhibit 1, p. 1. Included in the 401k package were additional statement periods, a service provider e-mail requesting a hardship withdrawal based on medical expenses, a hardship withdrawal application, and other terms/clauses of the 401k. See Exhibit 1, pp. 4-50.

6. On August 18, 2014, the Department sent Claimant a Health Care Coverage Determination Notice (determination notice) notifying her that her MA application was denied effective June 1, 2014, due to excess assets. See Exhibit 3, pp. 1-3

7. On October 3, 2014, Claimant's spouse and AHR filed a hearing request, protesting the MA denial. See Exhibit 4, pp. 2-5.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

☒ The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In Michigan, individuals who are over age 65, blind, disabled, entitled to Medicare, or formerly blind or disabled are eligible for MA under Supplemental Security Income (SSI)-related categories. BEM 105 (January 2014), p. 1. For an individual in a LTC facility, eligibility for SSI-related MA categories is subject to a $2,000 asset limit

applicable to an asset group of one. BEM 211 (January 2014), p. 4; BEM 402 (April 2014), p. 3. When the institutionalized spouse is married, the Department excludes the protected spousal amount (PSA), a portion of the couple's assets protected for use by the community spouse, from the calculation of the institutionalized spouse's asset-eligibility for MA. BEM 402, pp. 4 and 9.

In calculating a client's MA asset-eligibility, the Department performs an initial asset assessment to calculate the couple's total countable assets as of the first day of the institutionalized spouse's first continuous period of care to determine the PSA. BEM 402, pp. 1 and 7. In general, in the absence of a court order or hearing to the contrary, the PSA is equal to one-half of the couple's total countable assets, as calculated at the initial asset assessment (IAA), subject at the time of Claimant's MA application in 2014 to a minimum of $ 23,448 and a maximum of $117,240. See Exhibit 4, p. 17 and 2014 SSI and Spousal Impoverishment Standards, *Centers for Medicare & Medicaid Services*, January 2014, p. 1. Available at http://medicaid.gov/Medicaid-CHIP-Program-Information/By Topics/Eligibility/Downloads/Spousal-Impoverishment-2014.pdf.

When the institutionalized spouse applies for MA, the amount of his or her countable assets for initial asset eligibility is equal to (i) the value of the couple's (his, her, their) countable assets for the month being tested minus (ii) the PSA. BEM 402, p. 4. If the result of this calculation is greater than the applicable $2,000 asset limit for MA eligibility, the institutionalized spouse is ineligible for MA. BEM 402, p. 4. Applicants eligible for the processing month are automatically asset eligible for up to 12 calendar months (the presumed asset eligible period). BEM 402, pp. 4-5.

In this case, the Department calculated Claimant/spouse's countable assets to be $99,981.64. See Exhibit 4, p. 17. The Department testified this amount comprised of the spouse's 401k and three bank accounts. Claimant's AHR did not dispute that the total amount was $99,981.64; however, argued that the 401k should not be a countable asset. Within the spouse's 401k plan, there was a provision that allowed the spouse to withdraw from the 401k by taking a loan. See Exhibit 1, p. 39. The Department argued that even if Claimant took a loan from a retirement plan it is an available asset. See Exhibit 2, p. 1 (e-mail from DHS Medicaid policy). In response, Claimant's AHR argued that 401k plan is not a liquid asset. In fact, Claimant's AHR provided an e-mail from the Michigan Department of Community Health (DCH) that stated the contrary to the DHS e-mail. The DCH e-mail stated that it sounded as if the spouse cannot cash out the 401k because a loan is different. See Exhibit A. Therefore, the e-mail stated the 401k is not a countable asset for the determination of the Claimant's eligibility because the account is not available.

Both parties presented reasonable arguments as to whether the 401k should or should not be a countable asset because of the loan withdrawal clause. However, upon further review of the 401k statement, it appears that the 401k is a countable asset for reasons discussed below.

Assets must be considered in determining eligibility for SSI-related MA categories. BEM 400 (July 2014), p. 1. Assets mean cash, any other personal property and real property. BEM 400, p. 1. For SSI-Related MA, asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 6.

An asset must be available to be countable. BEM 400, p. 8. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 8. The Department assumes an asset is available unless evidence shows it is not available. BEM 400, p. 8.

Retirement plans, including 401k plans, are considered a type of asset. See BEM 400, p. 23. For retirement plans, the value of these plans is the amount of money the person can currently withdraw from the plan. BEM 400, p. 24. The Department deducts any early withdrawal penalty, but not the amount of any taxes due. BEM 400, p. 24. Funds in a plan are not available if the person must quit his job to withdraw any money. BEM 400, p. 24. It should be noted that Claimant's AHR testified that the spouse is currently employed and did not quit his job. As such, the above exception that the funds in the 401k plan are not available if the person must quit his job to withdraw any money is not applicable in this case. See BEM 400, p. 24. Verification of retirement plans includes a written statement from plan administrator or a current plan statement. See BEM 400, p. 58.

A review of the spouse's 401k plan discovered a hardship and loan withdrawal options to access the 401k. See Exhibit 1, pp. 17-20 and 39. Reasons for the hardship withdrawal include medical/dental expenses, purchase of a primary residence, payment of tuition, etc…See Exhibit 1, p. 18. Applicable to this case and terms of the spouse's plan, a hardship withdrawal could be done for the following:

> Medical expenses, which are not reimbursable by insurance and have been deemed medically necessary by a physician, that were incurred by you, *your spouse*, or any of your dependents.

Exhibit 1, p. 19 (emphasis added). The application further notated under the tax withholding election the following:

> Regardless of your withholding election, your withdrawal is subject to federal income taxation, and you may be subject to a *10% federal tax penalty for early withdrawal (and possibly state tax penalties as well)*.

Exhibit 1, p. 20 (emphasis added). Under the in-service withdrawals section of the spouse's plan, it further discussed the hardship withdrawal conditions. See Exhibit 1, p. 40. This included the following statement:

> A final penalty is that a 10% excise tax will apply to the amount withdrawn in addition to your regular tax rate.
>
> Exhibit 1, p. 40.

However, a review of the hardship application discovered an additional requirement before the Claimant can even elect a hardship withdrawal as follows:

> By signing this application….(2) I have already obtained all withdrawals (other than a hardship withdrawal) and *non-taxable loans available to me from any plan in which I am a Participant*.
>
> See Exhibit 1, p. 20 (emphasis added).

Based on this information, it would appear that the spouse would first have to obtain a loan before he could elect a hardship withdrawal. Therefore, this analysis turns to the spouse's ability to conduct a loan withdrawal. The loan withdrawal terms stated that "you are allowed one outstanding loan at any given time." See Exhibit 1, p. 39. The evidence indicated, though, that the spouse did have an outstanding loan of $10,452.69, which was included in the ending value of the statement. See Exhibit 1, pp. 1-11. As such, the evidence appears to indicate that the spouse is unable to conduct a loan withdrawal because he currently has an outstanding loan. Therefore, it is unnecessary to determine in this decision if the 401k should or should not be a countable asset based on the loan withdrawal clause. The spouse is unable to perform a loan withdrawal based on the submitted evidence. However, it is still possible for the spouse to conduct a hardship withdrawal based on medical reasons. Thus, the analysis now turns again to the hardship withdrawal.

The evidence indicated that the spouse actually inquired into a hardship withdrawal based on medical expenses. See Exhibit 1, pp. 12-14. An e-mail from the 401k service provider stated that "as of June 25, 2014, you (the spouse) have $20,979.49 available for a hardship withdrawal." See Exhibit 1, p. 12. It is unclear if the spouse already submitted medical expenses for the Claimant or if this is the maximum available for medical expenses.

Based on the above information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's MA application effective June 1, 2014, due to excess assets.

First, the above analysis appeared to indicate that the spouse is not eligible for another loan withdrawal because the 401k does not allow more than one outstanding loan at any given time. See Exhibit 1, pp. 1-11 and 39. Thus, this Administrative Law Judge (ALJ) does not need to determine if the 401k should or should not be a countable asset

based on the loan withdrawal clause because the spouse is unable to perform such a transaction.

Second, the evidence again appeared to indicate that the spouse can conduct a hardship withdrawal based on medical expenses for his spouse. This would possibly indicate that the 401k is a countable asset, but only to the amount that he can currently withdraw from the plan. See BEM 400, p. 24. For example, the e-mail from the service provider indicated he could only withdraw $20,979.49. See Exhibit 1, p. 12. But it is unknown at the time of the application the amount the spouse could withdraw. Additionally, policy indicates that the Department deducts any early withdrawal penalty, but not the amount of any taxes due. BEM 400, p. 24. If the spouse conducted a hardship withdrawal, the 401k policy included a 10% federal tax penalty/excise tax in which the Department has to take into consideration and deduct from the possible asset availability. See Exhibit 1, pp. 20 and 40.

Nevertheless, for the above stated reasons, the Department failed to satisfy its burden of showing that it properly determined and calculated Claimant and her spouse's countable assets. The Department will have to re-register the application and redetermine/recalculate Claimant and her spouse's countable assets (including the IAA) in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's MA application effective June 1, 2014, due to excess assets.

Accordingly, the Department's MA decision is **REVERSED**.

☒ THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate re-registration and re-processing of Claimant's MA application dated July 14, 2014, retroactive to June 2014;

2. Recalculate the MA budget and initial asset assessment (including Claimant and her spouse's countable assets), in accordance with Department policy;

3. Issue supplements to Claimant for any MA benefits she was eligible to receive but did not in accordance with Department policy; and

4. Notify Claimant/spouse/AHR of its MA decision in accordance with Department policy.

Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/29/2015**

Date Mailed: **1/29/2015**

EJF / cl

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc: [redacted]