

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-012178
Issue No.: 2001
Agency Case No.: [REDACTED]
Hearing Date: December 03, 2015
County: WAYNE-DISTRICT 82

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 3, 2015, from Detroit, Michigan. Petitioner is deceased. Petitioner was represented by her husband, [REDACTED] and her sister in law, [REDACTED]. [REDACTED] also appeared as Petitioner's Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by [REDACTED] Assistance Payment Worker.

ISSUE

Did the Department properly calculate the Initial Asset Assessment and deny Petitioner's application for Medical Assistance (MA) benefits on the basis that the value of her assets exceeded the limit?

FINDINGS OF FACT

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

1. Petitioner entered the hospital on [REDACTED], and was subsequently transferred to a nursing facility on [REDACTED]. (Exhibit A, pp. 1-6)
2. On [REDACTED], Petitioner applied for MA benefits. (Exhibit A)
3. An initial asset assessment (IAA) was run with a date of [REDACTED]. (Exhibit C)

4. On [REDACTED], the Department sent Petitioner an Initial Asset Assessment Notice informing her that based on countable assets of \$45,632.63, the protected spousal amount was \$23,844, and Petitioner's countable asset amount was \$21,788.63. (Exhibit C)
5. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice informing her that she was ineligible for MA on the basis that the value of her countable assets is higher than allowed for the program. (Exhibit D)
6. On [REDACTED] a hearing was requested on Petitioner's behalf disputing the IAA and subsequent denial of the MA application.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and 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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

For any individual in a LTC facility, eligibility for MA 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. 4; BEM 400 (July 2014), p. 7. However, when the individual in the LTC facility is married, the Department excludes the protected spousal amount (PSA) which is a portion of the individual's and his/her spouse's assets protected for use by the community spouse,^[1] from the calculation of the institutionalized spouse's asset-eligibility for MA. BEM 402, pp. 4, 9.

The Department determines the PSA by performing 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 and is needed to determine how much of a couple's assets are protected for the community spouse. BEM 402, pp. 1, 7. Generally,

^[1] The "community spouse" is the spouse of an individual in a hospital and/or LTC facility who has not himself or herself been, or expected to be, in a hospital and/or LTC facility for 30 or more consecutive days. BEM 402, p. 2.

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, subject to minimum and maximum amounts set annually by federal law. BEM 402, p. 9.

When the institutionalized spouse applies for MA, the amount of his or her countable assets for initial asset eligibility^[2] 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 institutionalized spouse's applicable \$2000 asset limit for MA eligibility, the institutionalized spouse is ineligible for MA based on excess assets. BEM 402, p. 4.

In this case, the Department acknowledged that although the MA application was received on October 15, 2014, due to issues with the Bridges system, the application was not timely processed in accordance with Department policies. The Department stated that after processing the application and performing the IAA, it determined that IAA amount was \$45,632.63, which was based on \$39,362.79 in jointly owned liquid assets as well as \$6,269.84 in life insurance. (Exhibit C). At the hearing, the Department provided a breakdown of the exact figures used in calculating the liquid and life insurance asset amounts and provided documentation in support of its testimony. (Exhibit A).

Specifically, the Department considered cash assets from checking, savings, or money market accounts in the amounts of \$30,304.86 and \$4,238.50 from [REDACTED] and \$2,583.35 and \$2,236.08 from [REDACTED], as well as the cash surrender value of two life insurance policies in the amount of \$1,314.64 and \$4,952.20. BEM 400 (February 2014), pp.13-14, 40-41. (Exhibit A). The Department explained that because one half of the IAA amount (\$22,816.32) was less than the \$23,844 minimum PSA, the applicable PSA for Petitioner's case was the standard \$23,844. BEM 402, p. 9. The Department determined that Petitioner's countable asset amount was \$21,788.63, which is in excess of the \$2,000 asset limit, thereby making her ineligible for MA. (Exhibit C, p. 3). The Department notified Petitioner's representatives of the denial on [REDACTED]. (Exhibit D).

At the hearing, Petitioner's AHR raised concerns with the Department's failure to timely register and process the application and indicated that had the Department notified Petitioner earlier of her asset ineligibility for MA, steps could have been taken to make Petitioner asset eligible sooner. Petitioner's AHR stated that the only dispute with respect to the IAA calculation is the inclusion of the bank account from [REDACTED] in the amount of \$30,304.86. Petitioner's AHR asserted that the value of this account should not be included in the IAA because it contained Petitioner's spouse's retirement income and while Petitioner's name is listed on the account as a joint owner, she had no activity on the account and had no money coming in or out. Petitioner's AHR testified that the account only contained income from [REDACTED]' retirement. A review of Department policy and the documents presented for review establishes that the account at issue is not a retirement account as defined by Department policy, but rather

a jointly owned bank account, the cash value of which is countable for MA purposes. See BEM 400. Furthermore, a review of the MA application shows that Petitioner's AR identified the accounts from [REDACTED] as checking and savings accounts. (Exhibit A). Therefore, the Department properly included the value of the [REDACTED] account in the amount of \$30,304.86 in the IAA calculation. As such, because the difference between Petitioner and her spouse's countable assets of \$45,632.63 and the PSA of \$23,844 is \$21,788.63 and greater than the \$2,000 MA asset limit, the Department properly determined that the value of Petitioner's assets were in excess of the limit.

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 acted in accordance with Department policy when it calculated the IAA and denied Petitioner's MA application based on excess assets.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/29/2015**

Date Mailed: **12/29/2015**

ZB / hw

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

