RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: March 17, 2016
MAHS Docket No.: 15-021810
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on February 23, 2016, from Lansing, Michigan. Attorney [redacted] ([redacted]) represented Petitioner. Assistant Attorney General (AAG) [redacted] ([redacted]) represented the Department of Health and Human Services (Department). [redacted] (Assistance Payments Worker) testified as a witness on behalf of the Department.

ISSUE

Did the Department properly determine Petitioner's asset eligibility for purposes of Long Term Care (LTC) Medical Assistance (MA) benefits?

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 was admitted to a nursing home on or around August, 2014.

2. On April 3, 2015, Petitioner applied for LTC-MA benefits. The application included a request for retroactive benefits for December 2014, January 2015, and February 2015. [Exhibit 1, p. 36].

3. On June 1, 2015, the Department mailed Petitioner a Health Care Coverage Determination Notice (DHS-1606) which indicated Petitioner was not eligible for MA effective January 1, 2015 due to failure to provide requested verifications of annuity resources and due to excess assets. [Exh. 1, p. 37].

4. Petitioner requested a hearing to dispute the decision. [Exh. 1, p. 36].

5. An administrative hearing was held on August 13, 2015. [Exh. 1, p. 36].

6. On August 18, 2015, an Administrative Law Judge (ALJ) issued a Hearing Decision which reversed the Department's decision to deny Petitioner's April 3, 2015 application for MA. The ALJ ordered the Department reregister and process the April 3, 2015 MA application and then issue a Health Care Coverage Determination Notice (DHS-1606). [Exhibit 1, pp. 36-40].

7. On September 18, 2015, the Department reprocessed Petitioner's April 3, 2015 MA application along with the retroactive MA request for January, February and March, 2015. [Exh. 1, p. 4].

8. On September 18, 2015, the Department mailed Petitioner's attorney a Health Care Coverage Determination Notice (DHS-1606) which indicated the following:

   a. Petitioner was eligible for MA for the month of January, 2015 with a $[redacted] patient pay amount (PPA). [Exh. 1, p. 42].

   b. Petitioner was not eligible for MA for February 1, 2015 through May 31, 2015 due to excess assets. [Exh. 1, p. 42].

   c. Petitioner's annual income was $[redacted] [Exh. 1, p. 43].

9. On October 7, 2015, Petitioner's attorney requested a hearing to challenge the Department's determination that Petitioner was denied MA due to excess assets based on LTC insurance and promissory note payments. [Exh. 1, p. 2].

10. On January 19, 2016, the Department filed and served upon opposing counsel an Amended Hearing Packet. [Exh. 1].

11. On February 16, 2016, the AAG, on behalf of the Department, filed and served upon opposing counsel a Pre-Hearing Brief. [See Department of Health and Human Services Pre-Hearing Brief and Proof of Service].

12. The hearing occurred on February 23, 2016. During the hearing, counsel for Petitioner requested an opportunity to file a brief in response to the Department's Pre-Hearing Brief.

13. On February 29, 2016, the Administrative Law Judge issued a Post-Hearing Scheduling Order which established March 4, 2016 as the deadline for Petitioner to file a response brief and March 9, 2016 for Respondent to file a reply brief. [Post-Hearing Scheduling Order].

14. On March 4, 2016, Petitioner, by counsel, filed and served Petitioner's Brief in Support of Appeal. [Petitioner's Brief in Support on Appeal and Proof of Service].

15. On March 9, 2016, the AAG, on behalf of the Department, filed and served a Post-Hearing Brief. [Department of Health and Human Services Post-Hearing Brief].

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.

In the instant matter, Petitioner requested a hearing because the Department processed her LTC-MA application and found that she was asset ineligible for the months of February through May 2015. The parties stipulated as to the facts and agreed that the issue in this matter is solely a question of policy interpretation.

Petitioner, by counsel, asserts that income received from her spouse (the community spouse) in months following the initial eligibility does not affect ongoing eligibility for Petitioner (the institutionalized spouse). [Pet. Brf. p. 1]. Petitioner points out that her spouse received income in February and March from an annuity and from a long-term care insurance policy, but the insurance policy funds should not have been counted as available asset. [Pet. Brf. p. 2]. In support of her position, Petitioner advances two arguments. First, Petitioner submits that the Medicare Catastrophic Coverage Act ("MCCA" or "Act"), 42 U.S.C. § 1396r-5, treats income and assets between the community spouse and the institutional spouse differently. [Pet. Brf. p. 3]. Under the MCCA, the annuity income received by Petitioner's spouse was sent to him individually and cannot be countable as Petitioner's available asset. [Pet. Brf. p. 3, citing 42 U.S.C. § 1396r-5(b)(1) & (2)].

Second, Petitioner argues that the MCCA does not allow any resources of the community spouse (Petitioner's husband) to be deemed available to the institutionalized spouse (Petitioner) after the initial month of eligibility. [Pet. Brf. p. 3]. According to Petitioner, the Department should have calculated the community spouse resource allowance (CSRA) based on the value of the couple's countable resources from the month of August. [Pet. Brf. p. 4]. Petitioner submits that the MCCA provides that any accumulation of resources by her husband following the month of eligibility is not considered resources available to Petitioner pursuant to the MCCA (42 U.S.C. § 1396r-5(c)(1)(A). Petitioner argues the Department has arbitrarily used June 2015 as the

processing month, which reflects the month the Department "got around to processing the claim" and falls beyond the 45 day standard of promptness. [Pet. Brf. p. 4]. Petitioner contends that the MCCA does not specifically mention a processing month and that the applicable time, according to the MCCA, is "the month in which an institutionalized spouse is determined to be eligible for benefits." [Pet. Brf. p. 5, citing 42 U.S.C. § 1396r-5(c)(4)]. Essentially, Petitioner argues the Department fails to properly follow and interpret its own policies; including BEM 402, p. 3. [Pet. Brf. p. 4]. Petitioner concludes that the Department has created regulations that contradict relevant federal law. [Pet. Brf. p. 5].

The Department, on the other hand, contends that following the reprocessing of Petitioner's LTC MA application, she was eligible for January 2015, but was not eligible for February through May, 2015 due to excess assets. [Dept. Brf. p. 2]. The Department indicates that it properly counted both Petitioner's and her spouse's assets when it denied eligibility for February through May, 2015. [Dept. Brf. p. 2]. Specifically, the Department indicates that BEM 402, pp. 3-4 provides that the initial asset eligibility formula should be applied as each past month, including retro months, and the processing month for applicants and the first future month for MA recipients. [Dept. Brf. p. 2]. In determining which months were past months, the Department contends that the caseworker properly used June 2015, which is the initial processing month, rather than September 2015, the re-processing month. [Dept. Brf. p. 3]. Thus, the Department submits, January through May 2015 are past months, June 2015 is the processing month and July 2015 is the first future month. [Dept. Brf. p. 3]. The Department, pursuant to BEM 402, p. 4, asserts that it properly applied the initial eligibility formula to January through June 2015 which is the value of the couple's countable assets for the month tested minus the protected spousal amount which equals the countable assets. [Dept. Brf. p. 3]. As a result, the Department indicates that it properly determined Petitioner was excess assets for February, March, April and May 2015. [Dept. Brf. p. 3].

The Department further argues that it also correctly counted assets that belonged to Petitioner's spouse when it applied the initial eligibility formula based on BEM 402, p. 4. According to the Department, BEM 402, p. 4, requires the Department to consider the spouse's assets. [Dept. Brf. p. 4].

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Again, it should be pointed out that the parties do not dispute the facts and it is clear that the issue in this matter is solely a question of policy interpretation.

The issue concerns the Department's determination of Petitioner's asset eligibility for purposes of LTC-MA. This is not a question of income eligibility. The policy in question is BEM 402 (7-1-2015) which is entitled, "Special MA Asset Rules." BEM 402, page 1 provides, "[u]nless the SPECIAL EXCEPTION POLICY in this item applies, an initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse. Do an initial asset assessment when one is requested by

either spouse, even when an MA application is **not** made; see DEFINITIONS and INITIAL ASSET ASSESSMENT."

In determining a client's asset eligibility, departmental policy provides that for initial eligibility, the Department applies the following formula to:

- Each past month[1], including retro MA months, and the processing month[2] for applicants, and

- The first future month[3] for MA recipients.

Exception: Do **not** do initial eligibility when the SPECIAL EXCEPTION POLICY above applies. BEM 402, pp. 3-4. [Emphasis in original].

The formula for asset eligibility is:

- The value of the couple's (his, her, their) countable assets for the month being tested.

- **MINUS** the protected spousal amount (see below).

- **EQUALS** the client's countable assets. Countable assets must **not** exceed the limit for one person in BEM 400 for the category(ies) being tested.

Exception: The client is asset eligible when the countable assets exceed the asset limit, if denying MA would cause undue hardship; see UNDUE HARDSHIP in this item. Assume that denying MA will **not** cause undue hardship unless there is evidence to the contrary. BEM 402, p. 4. [Emphasis in original].

The analysis used to determine the department's intent when it drafted BEM 402 is similar to the manner in which a court reviews the legislature's intent when interpreting a statute. "When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). To this end, we "must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id.* Statutory words must be read in context, and undefined terms are given their plain and ordinary meaning. *Mid-American Energy Co v Dep't of Treasury*, 308 Mich App 362, 370; 863 NW2d 387 (2014).

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[1] "Past month" is "[a]ny calendar month for which MA eligibility is being determined that is before the processing month." [Bridges Program Glossary (BPG) (7-1-2015), p. 46.]
[2] "Processing month" is defined as "[t]he calendar month during which the specialist determines MA eligibility." [BPG, p. 51].
[3] "Future month" is "[a]ny calendar month for which MA eligibility is being determined that is after the processing month." [BPG, p. 28].

"If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Ford Motor Co v Treasury Dep't*, 496 Mich 382, 389; 852 NW2d 786 (2014) (quotation marks and citation omitted). "A provision of law is ambiguous only if it 'irreconcilably conflict[s]' with another provision or 'when it is *equally* susceptible to more than a single meaning.'" *In re Application of Indiana Mich Power Co for a Certificate of Necessity*, 869 NW2d 276, 277; __ NW2d __ (2015), quoting *Koontz*, 446 Mich at 318.

The Administrative Law Judge has reviewed the applicable sections of BEM 402 (most notably, pages 3 and 4) and does not find the language to be ambiguous or contrary to federal or state law. Petitioner's argument that BEM 402 directly conflicts with the MCCA is without merit. The MCCA sections cited do not prohibit the Department from considering Petitioner's available and countable cash assets. The Administrative Law Judge does not find that BEM 402 imposes additional requirements or improperly considered income from the community spouse with regard to the application of the initial asset eligibility formula.

Here, the Department followed BEM 402 when it looked to the initial month it processed Petitioner's application in June 2015, rather than in September 2015, which when it was re-processed following an administrative hearing. [Exh. 1, pp. 36-40]. An administrative hearing cannot alter the processing month. Thus, June, 2015 is the correct "processing month" or the month the specialist determined eligibility as defined by policy. See BPG, p. 51 and BEM 402, p. 3. Thus, July 2015 would be the proper future month. The Department also correctly considered January through May, 2015 as past months according to BEM 402, p. 3. These definitions are clearly set forth in the BPGs referenced above.

The purpose of BEM 402 is for the Department to conduct an initial asset assessment to determine how much of a couple's assets are protected for the community spouse. BEM 402, p. 1. When the Department received the LTC-MA application in April 2015, the plain language of the policy requires it consider the couple's assets. BEM 402, p. 4 clearly provides that the initial eligibility formula for asset eligibility is "[t]he value of the **couple's (his, her, their**) countable assets for the month being tested." [Emphasis added]. This includes both Petitioner and her spouse. Again, Petitioner does not dispute the facts in this matter. Petitioner only disputes the policy. Here, the Administrative Law Judge finds the Department properly applied the BEM 402 initial asset assessment formula to the months of January, February, March, April, May and June 2015. The Department also correctly determined that Petitioner was not asset eligible in February, March, April and May 2015 because she was over the $2,000 asset limit. There was no evidence of undue hardship in this case.

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 determined Petitioner's LTC-MA eligibility for January and February through May, 2015.

DECISION AND ORDER

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

IT IS SO ORDERED.

CP/las

C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[redacted]

Counsel for Respondent

[redacted]

Petitioner

[redacted]

Counsel for Complainant

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