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.: 15-020002
Issue No.: 2001
Agency Case No.: [redacted]
Hearing Date: January 6, 2016
County: MACOMB-DISTRICT 36

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 January 6, 2016, from Detroit, Michigan. The Petitioner was represented by Petitioner's Authorized Hearing Representative (AHR)/attorney [redacted]; and Petitioner's spouse, [redacted]. The Department of Health and Human Services (Department) was represented by [redacted], Hearings Facilitator; [redacted], Eligibility Specialist; and [redacted], Eligibility Specialist.

ISSUES

Did the Department properly deny Petitioner's Medical Assistance (MA) application effective [redacted]?

Did the Department properly process Petitioner's MA application dated [redacted]?

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 [redacted], Petitioner's spouse submitted a DHS-4574, Medicaid Application for Nursing Facility Patient and a DHS-4574-B, Assets Declaration for Patient and Spouse. See Exhibit A, pp. 5-11.

2. In the application, Petitioner's spouse indicated that the name of the nursing facility is "[redacted]" and the date of Petitioner's date of nursing facility admission was "[redacted]." See Exhibit A, p. 8. Petitioner has continually resided in [redacted] as of this hearing.

3. On [redacted], the Department conducted a collateral contact with the business office of Arden Courts and notated the following on the Department's DHS-223, Documentation Record: (i) Arden Courts is not a Nursing Home; (ii) they do not have Medicaid beds; and (iii) they are only an Assisted Living Facility. See Exhibit A, p. 13.

4. On [redacted], Petitioner's spouse submitted a Health Care Coverage Supplemental Questionnaire (supplemental questionnaire), with attached documentation. See Exhibit A, pp. 14-36.

5. Due to the collateral contact with Arden Courts, the Department determined that the Assisted Living Facility is not a long-term care (LTC) facility and therefore, did not conduct an initial asset assessment (IAA).

6. The Department processed Petitioner's application as a non-LTC/hospital/waiver/PACE setting and used BEM 400 to determine Petitioner's Supplemental Security Income (SSI)-related asset eligibility.

7. The Department calculated Petitioner's total countable resource amount to be $153,477.94, which the Department indicated exceeded the $3,000 asset limit applicable to an asset group of two (Petitioner and spouse). See Exhibit B, pp. 1-2.

8. On [redacted], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that his MA application was denied effective [redacted], ongoing, because the value of his countable assets are higher than allowed for this program. See Exhibit A, pp. 38-40.

9. On [redacted], Petitioner's AHR filed a hearing request, protesting the Department's action. See Exhibit A, pp. 3-4 and 41-42.

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.

Preliminary matter

First, during the hearing, the Department requested that the hearing be adjourned and/or rescheduled in order to seek Attorney General Representation. However, the undersigned denied the Department's request. In the present case, the Department knew the AHR was an attorney as of the hearing request received date of [redacted], [redacted] See Exhibit A, pp. 3-4.

Policy states that within 24 hours of the department receiving notice that a client will be represented by an attorney, a DHS-1216AP, Request for Attorney General Representation, must be completed. BAM 600 (October 2015), p. 3. Requests are to be emailed to the Office Legal Services and Policy (OLSP) at DHS-AGrepresentation-AP@michigan.gov. BAM 600, p. 3. Once received by the OLSP, the request will be reviewed for appropriateness and completeness, and if approved, OLSP will forward the DHS-1216AP to the Office of the Attorney General to be assigned. BAM 600, p. 3.

The Attorney General's Office requires a two-week notice prior to the date of the hearing. BAM 600, p. 3. If there is less than two weeks' notice, a request for adjournment should be made to the Michigan Administrative Hearing System (MAHS) for the purpose of arranging legal representation; see Request for Adjournment in this item. BAM 600, pp. 3-4. A hearing date does not have to be received for the request for representation to be made. BAM 600, pp. 3-4.

The client, AHR, or local office may request an adjournment of a scheduled hearing. BAM 600, p. 11. Instruct the client or AHR to call MAHS to request an adjournment. BAM 600, p. 11. All requests for adjournment should be in writing to MAHS and must include a specific reason for the request unless exception #1 or #2 below applies (FAP only exceptions). BAM 600, pp. 11-12. Only MAHS can grant or deny an adjournment. BAM 600, p. 11. MAHS will notify the hearings coordinator if the adjournment is granted. When the hearing is rescheduled, a new notice of hearing is mailed to everyone who received the original notice. BAM 600, pp. 11-12.

Based on the foregoing information, the undersigned denied the Department's adjournment request to obtain Attorney General Representation. The Department was well aware that the AHR was an attorney in this case and failed to request representation within the policy requirements. See BAM 600, pp. 3-4. Moreover, the first time the Department requested such an adjournment was after the hearing had proceeded and both parties began their arguments. The adjournment request in this instance is denied. See BAM 600, pp. 3-4 and 11-12.

Second, as part of the evidence record, the undersigned was supposed to receive, subsequent to the hearing, Petitioner's Exhibit 1 for the record. However, such documentation was not immediately received after the hearing. Nevertheless, Petitioner's AHR faxed the documentation on [redacted], which the undersigned

admitted into the evidence record as the Department did not object to such documentation being admitted during the hearing.

MA application

In Michigan, individuals who are over age 65, blind, disabled, entitled to Medicare, or formerly blind or disabled are eligible for MA under SSI-related categories. BEM 105 (October 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 and $3,000 asset limit for an asset group of two. BEM 211 (January 2015), p. 5; BEM 400 (July 2015), p. 7; and BEM 402 (July 2015), 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 IAA 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 IAA, subject at the time of Petitioner's MA application in 2015 to a minimum of $ 23,844 and a maximum of $119,220. See BEM 402, p. 9.

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 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 the present case, the Department did not conduct an IAA for the following reasons stated below.

On [redacted], the Department conducted a collateral contact with the business office of [redacted] and notated the following on the Department's DHS-223, Documentation Record: (i) [redacted] is not a Nursing Home; (ii) they do not have Medicaid beds; and (iii) they are only an Assisted Living Facility. See Exhibit A, p. 13.

Due to the collateral contact with [redacted], the Department determined that the Assisted Living Facility is not a LTC facility and therefore, argued that it did not have to conduct an IAA. The Department argued that IAA's are only conducted when clients are located in LTC facility, which is defined as a nursing home. See Bridges Policy Glossary (BPG) 2015-010 (July 2015), p. 39 (LTC means a nursing home that provides nursing care). Because [redacted], according to the Department, is defined as a

non-LTC facility (Assisted Living Facility), the Department processed Petitioner's application as a non-LTC/hospital/waiver/PACE setting and used BEM 400 to determine Petitioner's SSI-related asset eligibility. See BEM 402, p. 13 (when to use BEM 400 to determine SSI-related asset eligibility).

The Department calculated Petitioner's total countable resource amount to be $153,477.94, which the Department indicated exceeded the $3,000 asset limit applicable to an asset group of two (Petitioner and spouse). See Exhibit B, pp. 1-2. Thus, on [redacted], the Department sent Petitioner a determination notice notifying him that his MA application was denied effective [redacted], ongoing, because the value of his countable assets are higher than allowed for this program. See Exhibit A, pp. 38-40.

In response, the AHR disputed the Department's interpretation that [redacted] did not meet the definition of an LTC facility. Because the AHR argued that [redacted] is an LTC facility, the Department should have conducted an IAA. The AHR did not dispute that [redacted] does not have Medicaid beds, but felt the Department was playing semantics with the definition of a nursing home and/or LTC. As part of the evidence record, the AHR provided the online website of [redacted] that described what the facility provides. See Exhibit 1, pp. 1-4. The following is just an excerpt that [redacted] provided the following: (i) provides health services, including supervision by staff specialty trained in Alzheimer's and dementia care and professional nurses available 24-hours a day; (ii) assistance in behavioral, recreational, and social services; and (iii) personal care services, including personal hygiene, bathing, dressing and undressing, mobility, and toileting. See Exhibit 1, pp. 1-4.

Nonetheless, the undersigned will not further discuss whether [redacted] falls under the meaning of an LTC facility because the undersigned discovered in policy in which the Department should have conducted an IAA anyways.

Unless the special exception policy in BEM 402 applies, an IAA is needed to determine how much of a couple's assets are protected for the community spouse. BEM 402, p. 1. The Department does an IAA when one is requested by either spouse, even when an MA application is not made. BEM 402, p. 1.

Regarding special exception policy, the Department does not do an IAA (see below), even if the client or community spouse requests it, and do not do Initial Eligibility (see below) when at the time a client becomes an hospital and/or long term care facility (L/H), PACE, or waiver client:

- The individual is already eligible for and receiving, SSI-related MA and one or both of the following is true:
    - The client's asset group for SSI-related MA included the spouse who is now the community spouse.

- The community spouse is eligible for, and receiving, SSI-related MA from Michigan, including as an SSI recipient.

BEM 402, p. 2. The client is considered asset eligible; therefore:

- Begin the client's Presumed Asset Eligible Period.
- Do not compute a community spouse resource allowance.
- Do not send a DHS-4588, Initial Asset Assessment Notice; DHS-4586, Asset Transfer Notice; or DHS-4585, Initial Asset Assessment and Asset Record.

  BEM 402, p. 2.

There was no evidence indicating that the above special exception policy applied in this case. See BEM 402, p. 2.

Additionally, the DHS-4574-B, Assets Declaration, is used to request an IAA. BEM 402, p. 8. The federal law requires that an IAA be done when requested by either spouse even when an MA application is NOT made. BEM 402, p. 8.

Also, under the instructions section of BEM 402, it states a completed, signed DHS-4574-B is used to request an initial asset assessment. BEM 402, p. 12. All such requests, whether or not in conjunction with an MA application, must be registered and disposed of. BEM 402, p. 12.

In this case, Petitioner's spouse submitted a DHS-4574-B, Assets Declaration, on [redacted]. See Exhibit A, pp. 6-7. Policy clearly states that the Department does an IAA when one is requested by either spouse unless the special exception policy applies. BEM 402, pp. 1 and 8. As stated above, the special exception policy did not apply in this case; therefore, the Department failed to process the spouse's IAA request in accordance with Department policy. Because the Department failed to process the IAA request in accordance with Department policy, the Department, in turn, failed to properly process Petitioner's MA application and the denial of the application was improper. The Department is ordered to re-register and reprocess the application, including the Department conducting an IAA in accordance with Department policy. BEM 402, pp. 1 and 8.

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 did not act in accordance with Department policy when it failed to properly process Petitioner's MA application dated [redacted] and therefore, the denial of the application was improper.

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 Petitioner's MA application dated [redacted];

2. Conduct an initial asset assessment;

3. Issue supplements to Petitioner for any MA benefits he was eligible to receive but did not from [redacted], ongoing; and

4. Notify Petitioner/his spouse/authorized representative of its MA decision, including the results of the initial asset assessment.

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

Date Signed: **1/13/2016**

Date Mailed: **1/13/2016**

EF / 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: [redacted]