



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 29, 2016
MAHS Docket No.: 15-021916
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 February 29, 2016, from Detroit, Michigan. The Petitioner was represented by her attorney, [REDACTED]. [REDACTED], Petitioner's Daughter who has Durable Power of Attorney of Petitioner and [REDACTED], Petitioner's daughter in law also appeared. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG), [REDACTED]. [REDACTED] solicited testimony from [REDACTED], Assistance Payment Worker.

ISSUE

Did the Department properly determine that Petitioner was ineligible for Medical Assistance (MA) coverage for the months of April 2015 and May 2015, 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 had a life insurance policy with a face value of \$5000. (Exhibit 4)
2. On April 1, 2015, Petitioner was admitted to a Long Term Care (LTC) facility.
3. On April 19, 2015, Petitioner's daughter, [REDACTED] [REDACTED] as Authorized Representative (AR) submitted an online application for MA benefits, seeking

additional retroactive (retro) MA benefits going back to January 2015 on Petitioner's behalf. (Exhibit A, pp. 22-28)

4. On June 15, 2015, the Department sent Petitioner's AR a Health Care Coverage Determination Notice (Notice) informing her that Petitioner's April 19, 2015, MA application, including the retro months was denied based on excess assets. (Exhibit A, pp. 29-32)
5. The June 15, 2015, Notice informs Petitioner's AR of the options available for spending down assets in accordance with Department policy, including surrendering a life insurance policy or transferring a life insurance policy to a funeral or burial agreement. (Exhibit A, p. 29)
6. The June 15, 2015, Notice further informs Petitioner's AR of the right to appeal the information contained in the Notice, should she believe the Department's decision is wrong. Petitioner's AR was instructed to file a written appeal within 90 days of the mailing date of the Notice (09/14/2015) or the hearing will not be granted. (Exhibit A, p. 32)
7. The June 15, 2015, Notice was sent to Petitioner's AR's correct mailing address and Petitioner's AR confirmed receiving the Notice.
8. On June 19, 2015, Petitioner surrendered her life insurance policy and used the cash received to obtain a funeral contract. (Exhibit 4)
9. The cash surrender value of the life insurance policy including unused premiums, was \$2434.50. (Exhibit 4)
10. On July 15, 2015, Petitioner's AR submitted a DHS-4674 MA Application for Patient of a Nursing Facility, seeking additional retroactive MA coverage going back to April 2015. (Exhibit A, pp. 33-39)
11. After receiving requested verifications, the Department processed Petitioner's July 15, 2015, Long Term Care (LTC) MA application.
12. On August 10, 2015, the Department sent Petitioner's AR a Notice advising that Petitioner was approved for MA with a patient pay amount of \$1441, effective July 1, 2015, ongoing. (Exhibit A, pp. 45-47)
13. On August 13, 2015, the Department sent Petitioner's AR a Notice advising that Petitioner was approved for MA for the retro month of June 2015, with a patient pay amount of \$1441. The Notice further advises that Petitioner was denied MA for the months of April 2015 and May 2015 on the basis that the value of her assets exceeded the limit for those months. (Exhibit A, pp. 48-51)
14. On November 6, 2015, Petitioner's AR requested a hearing on her behalf, disputing the Department's actions.

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.

Petitioner's attorney raised two concerns at the hearing: the denial of the April 19, 2015, MA application; and the denial of MA coverage for the months of April 2015 and May 2015 in connection with the July 15, 2015, LTC MA application. Each application will be addressed individually below.

April 19, 2015, MA Application

In the present case, Petitioner's attorney disputed the Department's denial of the MA application dated April 19, 2015, and submitted on her behalf by her AR, Peggy Darnell.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). Department of Human Services Bridges Administrative Manual (BAM) 600 (October 2015), p. 2. Moreover, BAM 600, p. 6 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. MAHS may grant a hearing about a denial of an application and/or supplemental payments; reduction in the amount of program benefits or service; suspension or termination of program benefits or service; restrictions under which benefits or services are provided or delay of any action beyond the standards of promptness. BAM 600, pp.4-5.

It was established at the hearing that on June 15, 2015, the Department notified Petitioner's AR via a Health Care Coverage Determination Notice that the application was denied on the basis that Petitioner had excess assets. (Exhibit A, pp. 29-32). A review of the Notice revealed that it was sent to Petitioner's AR's confirmed mailing address and at the hearing, the AR did not allege that she had any problems receiving mail. Petitioner's AR confirmed that she received the Notice informing her of the denial. Petitioner's AR did not request a hearing until November 6, 2015. Petitioner's attorney asserted that Petitioner did not request a hearing prior to November 6, 2015, because the Department advised the AR not to appeal and just to reapply, which she did on July

15, 2015. Petitioner's attorney relied on BAM 105 and maintained that it is the Department's responsibility to protect the client's rights by providing accurate advice, which it failed to do in this case. BAM 105 (July 2015), p. 1. Petitioner's attorney further argued that the Appeal Information provided on the Notice is not clear and does not inform clients that they must appeal or what will happen if they do not appeal.

This Administrative Law Judge (ALJ) rejects Petitioner's attorney's argument that the Department failed to protect the client's rights. A review of the Notice establishes that although not required to do so, the Department provided Petitioner's AR with information regarding the options available in order to assist in securing Petitioner's MA eligibility asset by spending down the available assets. Furthermore, the Appeal Information clearly informs the client of her right to request a hearing and that the hearing request must be received by the Department within 90 days, on or before September 14, 2015. (Exhibit A, p. 32).

Therefore, because the Department's Notice to Petitioner's AR was dated June 15, 2015, and Petitioner did not file a request for hearing to contest the Department's action until November 6, 2015, Petitioner's hearing request concerning the denial of the April 19, 2015, MA application was not timely filed within ninety days of the Notice and is, therefore, **DISMISSED** for lack of jurisdiction.

July 15, 2015, MA Application

In the present case, Petitioner's attorney disputed the Department's denial of MA coverage for the retro months of April 2015 and May 2015, in connection with the application submitted on July 15, 2015.

The Department contended that MA coverage for the months of April 2015 was denied because Petitioner's assets exceeded the limit for MA eligibility. The Department notified Petitioner's AR of the denial on August 13, 2015. (Exhibit, pp. 48-51). Asset eligibility is required for MA coverage under SSI-related MA categories, which are categories providing MA coverage to individuals who are aged, disabled or blind. BEM 400 (April 2015), p. 1; BEM 105 (October 2014), p. 1. The Department will consider the value of cash assets (which includes money in checking and savings accounts) and the applicable value of any life insurance policies in determining a client's asset eligibility for MA. BEM 400, pp. 13-14, 41-44. Asset eligibility will exist 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. For SSI-related MA, the asset limit is \$2000 for an asset group of one (Petitioner). BEM 400, p. 7; BEM 211 (January 2015), p. 5.

In this case, the Department testified that in making the determination that Petitioner had excess assets, it considered the cash assets in Petitioner's bank accounts and the cash surrender value of her life insurance policy. The Department presented MA Asset Budgets for each of the months at issue in support of its position that Petitioner had excess assets. (Exhibit A, pp. 42-43). The Department stated that Petitioner would have

been asset eligible for MA for April 2015 and May 2015 if only cash assets were considered, however, because Petitioner had a life insurance policy that was not cashed in until June 19, 2015, the applicable value of the policy made Petitioner ineligible for MA for the months of April 2015 and May 2015. Petitioner was determined to be asset and otherwise eligible for MA for the period of June 1, 2015, ongoing.

For SSI-related MA, a life insurance policy is a countable asset of the policy owner if it can generate a cash surrender value (CSV) (also referred to as cash value). BEM 400, pp. 41-44. The CSV is the amount of money the policy owner can get by canceling the policy before it matures or before the insured dies; it is not the same as the face value of the policy. For MA purposes, a life insurance policy's value is its CSV, unless the value of the insurance policy is excluded under Department policy because (i) the policy is for funeral and meets the definition for a funeral plan policy, or (ii) the face value of all policies a policy owner has for the same insured is \$1,500 or less. BEM 400, pp. 41-44.

In the present case, it was undisputed that Petitioner's AR terminated Petitioner's life insurance policy on June 19, 2015, for its CSV of \$2370.00, plus an additional \$64.50 in unused premiums. (Exhibit 4). Although Petitioner's attorney solicited testimony from his witnesses to assert that Petitioner intended that the life insurance policy be used for her funeral or burial expenses, no documentation was presented to support the testimony. Thus, Petitioner's attorney failed to establish that the policy meets the definition of and should be excluded as a funeral plan policy as required by BEM 400. See BEM 400, pp. 41-52. Therefore, because the face value of the life insurance policy at issue was greater than \$1,500, the CSV was properly included as a countable asset for MA purposes.

Petitioner's attorney again maintained that the Department failed to protect Petitioner's rights under BAM 105 by not advising her prior to June 2015 that the life insurance policy could be cashed out and the proceeds used to purchase a funeral or burial contract, however, the Department does not have an obligation per Department policy to provide clients with legal advice. Petitioner's attorney raised additional equitable and due process arguments that this ALJ does not retain any jurisdiction or authority to address for purposes of this administrative hearing.

Upon further review, 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 denied Petitioner's retro MA coverage for the months of April 2015 and May 2015 based on excess assets.

DECISION AND ORDER

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



ZB/tlf

Zainab Baydoun
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

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