



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: April 4, 2016
MAHS Docket No.: 16-001437
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on March 29, 2016, from Lansing, Michigan. Participants on behalf of Petitioner included her attorney [REDACTED]. [REDACTED] (Long Term Care Specialist) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department of Health and Human Services (Department) properly deny the Petitioner's Medical Assistance (MA) application?

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 November 20, 2015, the Department received the Petitioner's application for Medical Assistance (MA) requesting Long Term Care (LTC).
2. The Petitioner receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED]
3. The Petitioner's social security benefits are paid to [REDACTED] as her representative payee and are deposited into to savings account of [REDACTED] and [REDACTED]

4. The Petitioner's payee reported to the Social Security Administration on a Representative Payee Report ([REDACTED]) the funds that have been spent on the Petitioner and that no funds have been saved for the Petitioner.
5. On December 16, 2015, the Department notified the Petitioner that she was not eligible for Medical Assistance (MA) benefits as of November 1, 2015.
6. On January 29, 2016, the Department received the Petitioner's request for a hearing protesting the denial of her Medical Assistance (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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (January 1, 2016), pp 1-7.

On November 20, 2015, the Department received the Petitioner's application for MA benefits and requesting Long Term Care (LTC). The Petitioner receives monthly RSDI benefits, which are deposited by her representative payee into the savings account of [REDACTED] and [REDACTED]. The evidence on the record supports a finding that no other funds other than the Petitioner's social security benefits have been deposited into this account and it is not disputed that balance of this account exceeds \$2,000. On December 16, 2015, the Department notified the Petitioner that she is not eligible for MA benefits due to her countable assets exceeding the \$2,000 asset limit.

The Department's representative argued that the Petitioner's social security benefits are being held by another person in an account that is not comingled with other funds and only used for the Petitioner's needs. The Department determined that these funds are

countable towards the Petitioner's eligibility for MA benefits because they fit the definition of a cash asset under BEM 400.

The bank account where the Petitioner's social security benefits are deposited is not owned by the Petitioner and no evidence was presented on the record that she has the authority to use or dispose of these assets. The Petitioner's representative provided documentation showing that her representative payee has reported to the Social Security Administration the amounts of social security benefits that have been spent on the Petitioner as well as the amounts saved for her.

This Administrative Law Judge finds that the savings account owned by [REDACTED] and the Petitioner's payee representative [REDACTED] is not a countable asset because it does not meet the availability test. No evidence was presented on the record that the Petitioner has the legal authority to use or dispose of these funds, or that any remaining funds not spent for the Petitioner's care are not solely the property of her payee representative.

No evidence was presented on the record that the Petitioner has entered into a written contract for the personal care she receives from her payee representative. If the Petitioner becomes eligible for MA benefits this may be relevant with respect to her eligibility for long term care, but is not relevant with respect to whether these cash assets are countable.

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 denied Medical Assistance (MA) to the Petitioner as of November 1, 2015.

DECISION AND ORDER

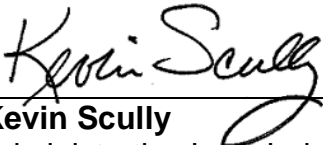
Accordingly, the Department's decision is **REVERSED**.

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 a determination of the Petitioner's eligibility for Medical Assistance (MA) as of November 1, 2015.
2. Provide the Petitioner with written notice describing the Department's revised eligibility determination.

3. Issue the Petitioner any retroactive benefits she may be eligible to receive, if any.

KS/las


Kevin Scully
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]

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Counsel for Petitioner

[REDACTED]