



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 19, 2016
MAHS Docket No.: 16-001745
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 April 21, 2016, from Lansing, Michigan. Petitioner was represented by Attorney R. Mannor. The Department was represented by Assistant Attorney General Hilligonds. LTC Worker Britton, Family Independence Manager Englehart and Family Independence Manager Scott appeared and testified for the Department. Department's Exhibit A, pages 1-107 was admitted into evidence.

ISSUE

Did the Department properly deny Petitioner's Medical Assistance (MA) LTC application on November 12, 2015?

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 July 30, 2015, a Medical Assistance (MA) application for Long Term Care (LTC) was submitted for Petitioner.
2. On August 17, 2015, a Verification Checklist (DHS-3503) was issued. The required verifications were due on August 27, 2015.
3. On August 27, 2015, a 10 day extension of time was granted to provide the required verifications.

4. On September 8, 2015, another 10 day extension of time was granted to provide the required verifications.
5. On September 21, 2015, The Department had not received a required verification regarding an annuity. A Life Insurance Verification (DHS-4786) was sent for an authorization signature so that the Department could send it to get the information from the insurance company.
6. On October 13, 2015, verification of the National Western Life Insurance annuity was received from the insurance company. The insurance company indicated that Petitioner and her husband owned the policy. (Department Exhibit A pages 50 & 51)
7. On November 12, 2015, a Health Care Coverage Determination Notice (DHS-1606) was issued by the Department denying Petitioner's application due to excess assets.
8. On February 10, 2016, a hearing request was submitted.

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 this case the Department used the value () given in the October 13, 2015, verification of the National Western Life Insurance annuity to determine Petitioner's eligibility. The Department determined that Petitioner was not eligible for Medical Assistance (MA) due to excess assets. The Department issued a Health Care Coverage Determination Notice (DHS-1606).

In the hearing request Petitioner first raised an issue that the Health Care Coverage Determination Notice (DHS-1606) was confusing. How easy it is to read an eligibility notice from the Department is not a hearable issue in accordance with Bridges Administration Manual (BAM) 600 Hearings.

Next Petitioner asserted that the National Western Life Insurance annuity should not be used as an asset to determine Petitioner's eligibility. Petitioner argues that paperwork was sent in to change ownership of the annuity and it is not Petitioner's fault that the company had not processed the paperwork. The company sent verification to the Department that Petitioner and her husband were the owners of the annuity. Any issues Petitioner has with the company are between herself and the company. The company's administrative process is not a hearable issue in accordance with Bridges Administration Manual (BAM) 600 Hearings.

The third issue Petitioner alleges is that the Department's calculation of the initial asset assessment is incorrect. Petitioner argued that the [REDACTED] amount should not have been used because the asset was worth less on the date of the application. Petitioner specifically argues that the surrender value of the asset on July 30, 2015 was [REDACTED], and that amount should have been used. The [REDACTED] figure comes from a July 30, 2015 statement Petitioner submitted as part of their hearing request. (Department Exhibit A page 88).

Bridges Eligibility Manual (BEM) 402 Special MA Asset Rules provides:

CLIENT'S ASSET ELIGIBILITY

Initial Eligibility

SSI-Related MA Only

Apply the following formula to:

Each past month, including retro MA months, and the processing month for applicants, and

The first future month for MA recipients.

Initial Eligibility Formula

SSI-Related MA

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.

PROTECTED SPOUSAL AMOUNT

MA Only

The protected spousal amount is the amount of the couple's assets protected for use by the community spouse. It is the **greatest** of the amounts in 1-4-4 below.

\$23,844 effective January 1, 2015.
\$23,448 effective January 1, 2014.
\$23,184 effective January 1, 2013.
\$22,728 effective January 1, 2012.
\$21,912 effective January 1, 2010.
\$21,912 effective January 1, 2009.
\$20,880 effective January 1, 2008.
\$20,376 effective April 1, 2007.

1. One-half the initial asset assessment amount (see INITIAL ASSET ASSESSMENT), but **not** more than:

\$119,220 effective January 1, 2015.
\$117,240 effective January 1, 2014.
\$115,920 effective January 1, 2013.
\$113,640 effective January 1, 2012.
\$109,560 effective January 1, 2010.
\$109,560 effective January 1, 2009.
\$104,400 effective January 1, 2008.
\$101,880 effective April 1, 2007.

2. The amount determined in a hearing per BAM 600.

3. The amount of assets transferred to the community spouse by the client pursuant to a court order requiring the client to:

Pay support to the community spouse, and
Transfer assets to the community spouse for the support of the community spouse or a family member. Family member is defined under FAMILY ALLOWANCE in BEM 546.

The Department submitted the BRIDGES print outs of asset details and the MA Asset test. (Department Exhibit A pages 65 & 66) The print out shows a total asset amount of \$124,160.00. The asset test shows that it was run using the maximum possible protected spousal amount of \$119,220 and showed \$4,940 of assets for Petitioner. As cited above, the correct protected spousal amount in this case would be \$62,080 ($\$124,160 / 2 = \$62,080$). As a technical point, the Department's initial asset calculation is incorrect. It is incorrect because the calculation allowed Petitioner \$57,140 ($\$119,220 - \$62,080 = \$57,140$) more of a protected spousal amount than policy allows.

Petitioner argued that if the Department had made the asset eligibility calculation using the was made using the \$22,994.72 figure from the July 30, 2015 statement for the annuity and allowing Petitioner to have \$2,000 in her name, Petitioner would not have been ineligible due to excess assets. That argument completely overlooks the fact that Petitioner's protected spousal amount IS NOT \$119,220, it is only \$62,080. Petitioner's argument does not work for the correct protected spousal amount of \$62,080.

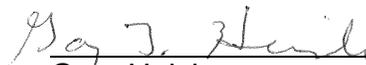
Using the correct protected spousal amount ($\$124,160 - \$62,080 = \$62,080$) makes Petitioner over the asset limit by \$60,080 ($\$62,080 - \$2,000 = \$60,080$). Using the \$22,994.72 figure from the July 30, 2015 statement for the annuity and allowing Petitioner to have \$2,000 in her name won't make \$60,080 disappear. The Department's determination that Petitioner was not eligible due to excess assets, is correct.

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 properly denied Petitioner's Medical Assistance (MA) LTC application on November 12, 2015.

DECISION AND ORDER

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

GH/nr



Gary Heisler
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]
1509 Washington, Ste. A
PO BOX 1609
Midland, MI
48641

Midland County DHHS- via electronic mail

BSC2- via electronic mail

M. Best- via electronic mail

EQAD- via electronic mail

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