



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 6, 2016
MAHS Docket No.: 16-000755
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 24, 2016, from Detroit, Michigan. The Petitioner was represented by Attorney [REDACTED]. The Petitioner did not appear. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED], [REDACTED], Assistance Payments Supervisor and [REDACTED], Eligibility Specialist.

ISSUE

1. Did the Department properly deny the Petitioner's Medical Assistance (MA) application due to excess assets?
2. Was the issue regarding the Petitioner's spouse's protected asset amount determination previously decided in a prior hearing?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner submitted a Medicaid Application and retro application on September 30, 2015. Exhibit 1 A-F. Exhibit 2 A-C.

2. A Verification Checklist (VCL) was sent out by the Department on October 12, 2015, with a due date of October 22, 2015. The VCL requested bank account statements for four bank accounts beginning September 2015. Exhibit 3 A.
3. The bank about information based upon the bank account statements for each of the months for June 2015 through September 2015 were provided by the Petitioner. Exhibit 4A, Exhibit 5C, Exhibit 7A, Exhibit 9A, Exhibit 10 A, Exhibit 11 A, Exhibit 12 A-C, Exhibit 13, Exhibit 14 A-B, Exhibit 15 A-C, Exhibit 16 A-B, Exhibit 17 A-B.
4. The Department completed an asset budget for the months of June 2015, July 2015, August 2015, and September 2015. Exhibits 18 A, 19 A, 20 A and 21 A.
5. In each of the months from July through September 2015, the Petitioner's assets based upon the asset budgets exceeded the \$ [REDACTED] spousal protected amount and was over the \$2,000.00 MA asset limit.
6. Pursuant to a March 11, 2015, hearing, a Hearing Decision dated March 17, 2015, was issued by Administrative Law Judge Christian Gardocki. The Hearing Decision issued by the ALJ specifically addressed whether the Department's determination of Petitioner's husband's community spousal amount in the amount of \$ [REDACTED] was correct. At the time, Petitioner's attorney sought to have the community spousal amount revised contending the Department took too long to decide the matter and denied the application; a home, which was never disclosed to the Department at the time of its determination, should be included when determining assets; and that the ALJ should in his discretion increase the community spousal amount due to hardship. The Decision notes that although the Petitioner's attorney contended that significant financial hardship would be caused Petitioner's spouse unless the community spousal amount was increased; no evidence was presented to support such a request. The Hearing Decision affirmed the Department's denial of the MA application under consideration due to the assets exceeding the asset limit. In its Conclusions of Law, the Petitioner's attorney did not rebut any evidence regarding the Department's determination of the protected community spousal amount of \$ [REDACTED]
7. The Department issued a Health Care Coverage Determination Notice dated October 28, 2015, denying the Petitioner's MA application due to excess assets effective September 1, 2015. The Petitioner's Specialist commented on the Notice as follows: Medicaid application denied on 10/28/15 for the following reason: (1) client/spouse over the protected asset amount of (\$ [REDACTED] for the months of June, July, August, and September 2015. Application denied per policy (BEM 400, 402). You are welcome to reapply. However client/spouse combined asset must be \$ [REDACTED] or less. Exhibit 22 a – C.
8. The Petitioner requested a hearing on January 26, 2016, seeking to challenge the Department's determination of the community spousal protected amount.

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 presented evidence demonstrating how it determined that the Petitioner's assets exceeded the \$2,000.00 asset limit established by BEM 400 for MA. BEM 400 (April 2016) p. 7. The Department denied the Petitioner's September 30, 2015, MA application and retro MA application due to excess assets. In this case, the Petitioner's community spousal protected amount was previously determined to be \$ [REDACTED] at the time of an earlier application. For the current application, the Petitioner's assets were reviewed for each of the months in question. For each of the months requiring analysis, the protected spousal amount was exceeded in the months of June, July, August, and September 2015. The Petitioner's assets were determined by the Department for each of these months based upon verification of bank account statements and other financial information. As a result of its analysis, the Department issued a Health Care Coverage Determination Notice dated October 28, 2015, denying the application due to countable assets being higher than the allowable asset limit of \$2,000.00. Exhibit 22.

The Department's determination of the total monthly assets for each of the months in question is not at issue in this case, except for the Petitioner's attorney's argument that the protected spousal amount was not properly determined. The question of whether the protected spousal amount was properly determined by the Department was previously considered in an earlier Hearing Decision, which considered the issue. The Hearing Decision dated March 17, 2015, was issued by Administrative Law Judge Christian Gardocki. That Hearing Decision was not appealed by the Petitioner.

The spousal protected asset amount is determined **initially based upon the first day of the first continuous period of care that began on or after September 30, 1989.** BEM 402, (January 1, 2016) p. 7. (Emphasis supplied).

Unless 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. BEM 402 (January 1, 2016) p. 1.

SSI-Related MA

The formula for asset eligibility is:

- The value of the couple's (his, hers, 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.

MA Only

An initial asset assessment is needed to determine how much of a couple's assets are protected for the community spouse.

An initial asset assessment means determining the couple's (his, her, their) total countable assets as of the first day of the **first** continuous period of care that began on or after September 30, 1989. BEM 402, p.7

An example given in Department policy further helps to explain the process:

Example: A married man entered a nursing home on 12/6/89. He was released on 6/10/90 and returned home.

On 3/16/91 he re-entered the nursing home and has been there continuously ever since.

He applied for MA on 10/2/91. To determine his asset eligibility, do an initial asset assessment for 12/6/89 - the

first day of the first continuous period of care that began on or after September 30, 1989. BEM 402, p. 7

Thus, the protected spousal amount is determined based upon the initial asset assessment based upon the first day of the first continuous period of care. It is not recalculated after that point.

The Petitioner's attorney presented no evidence at the hearing and also did not appeal the initial asset assessment made by the Department or Judge Gardocki's March 17, 2015, Hearing Decision.

In addition, at the hearing, the Petitioner's attorney argued that a hardship should be considered because the Petitioner may be evicted from the nursing home due to unpaid bills. The Petitioner did not raise this issue in his Hearing Request but clearly sought a hearing regarding asserting the client spousal protected amount was not properly determined. The requirements for establishing undue hardship are found in BEM 402 and at least initially **require a determination by the Department**. There was no evidence that the issue was presented to the Department for its consideration.

UNDUE HARDSHIP

SSI-Related MA Only

A client whose countable assets exceed the asset limit is nevertheless asset eligible when an undue hardship exists. Assume that denying MA will **not** cause undue hardship unless there is evidence to the contrary.

An undue hardship exists when the client's physician (M.D. or D.O.) states that:

- Necessary medical care is **not** being provided, and
- The client needs treatment for an emergency condition.

A medical emergency is any condition for which a delay in treatment may result in the person's death or permanent impairment of the person's health.

A psychiatric emergency is any condition that must be immediately treated to prevent serious injury to the person or others.

See BEM 100, Policy Exception Request Procedure.

Period of Eligibility

SSI-Related MA Only

The existence of a hardship **cannot** be used to establish eligibility for any month **prior** to the processing month because there must be a current need for medical care for a current emergency condition.

However, once eligibility is established for the processing month, the client is asset eligible for the presumed asset eligibility period. BEM 402 p. 11.

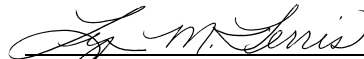
Given the fact that the Department has taken no action on a claim on Petitioner's behalf regarding undue hardship eligibility, as no such request has been made by Petitioner, the undersigned cannot address the issue. In addition, the Petitioner's hearing request did not request a hearing on the issue.

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 the Petitioner's September 30, 2015, application for MA and retro application due to excess assets.

DECISION AND ORDER

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

LMF/jaf



Lynn M. Ferris

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]

Counsel for Complainant

[REDACTED]

Petitioner

[REDACTED]

CC:

[REDACTED]